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ABSTRACT

The first annual report (1979) of the 15-member Bureau of Indian Affairs (BIA) Advisory Committee for Exceptional Children (ACEC) reflects activities, concerns, and recommendations to the Department of the Interior for providing appropriate specialized programs and services for education of the projected 4,506 American Indian and Alaska Native exceptional children. Contents include: letter of transmittal to Department of the Interior; philosophy statement; names and addresses of ACEC members; officers and ad hoc subcommittee members; ACEC President's statement; locations, dates, and summaries of full ACEC meetings; recommendations; and ACEC review of Department of the Interior/BIA FY 1979 Annual Program Plan. Recommendations include: better information for parents; formation of a Division of Exceptional Education within the Office of Indian Education Programs; preservice/inservice training opportunities in special education for American Indians and Alaska Natives; standardized special education regulations for BIA schools. Appendices present: BIA projected December FY 1979 child count; ACEC charter; names and addresses of special education personnel; U.S. General Accounting Office report entitled, "The Bureau of Indian Affairs Is Slow in Providing Special Education Services to All Handicapped Children"; Department of the Interior response to U.S. General Accounting Office report; and Report of The Consortium for Handicapped Indian Children. (NEC)

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BUREAU OF INDIAN AFFAIRS SPECIAL EDUCATION OPPORTUNITIES FOR EXCEPTIONAL CHILDREN, YOUTH AND ADULTS: THE FIRST ANNUAL REPORT TO THE DEPARTMENT OF THE INTERIOR

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BUREAU OF INDIAN AFFAIRS SPECIAL EDUCATION OPPORTUNITIES FOR EXCEPTIONAL CHILDREN, YOUTH AND ADULTS: THE FIRST ANNUAL REPORT TO THE DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs Advisory Committee for Exceptional Children

December 1980

Reproduced at

The Office of Technical Assistance and Training
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Brigham City, Utah

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
ADVISORY COMMITTEE FOR EXCEPTIONAL CHILDREN

TO: THE ASSISTANT SECRETARY - INDIAN AFFAIRS

The Bureau of Indian Affairs Advisory Committee for Exceptional Children is pleased to submit its **First Annual Report to the Department of Interior** as required by its charter, reflecting our activities, concerns, and recommendations regarding special education within the Bureau of Indian Affairs (BIA).

Throughout this past year the Advisory Committee has attempted to support the Bureau's efforts to establish and provide appropriate specialized programs and services for the education of American Indian and Alaska Native exceptional children, youth and adults. While much remains to be accomplished in this regard, we look forward to working with the Department and the Bureau of Indian Affairs to assure that all exceptional individuals have available appropriate educational opportunities.

Respectfully yours;
Terri Kline, Chairperson
Annual Report Subcommittee
BIA Advisory Committee for
Exceptional Children

PHILOSOPHY STATEMENT

The Bureau of Indian Affairs Advisory Committee for Exceptional Children believes that all American Indian and Alaska Native exceptional (handicapped* and gifted and talented) children, youth and adults have a right to a free appropriate public education. In order to provide for the unique needs of these culturally diverse exceptional individuals, the Committee is dedicated to advocating and advancing improvements in the U. S. Department of the Interior and Bureau of Indian Affairs policies, procedures, administrative organization, plans and funding to assure the availability of comprehensive special education and related services.

* handicapped - refers to those individuals by professionally qualified personnel as being, mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, othopedically impaired, other health impaired, deaf-blind, multi-handicapped, or as having specific learning disabilities, who because of those impairments need special education and related services.

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Officers and Ad Hoc Sub Committees
1979-1980

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Bruce A. Ramirez - President

Frances LeMay - Vice-President

Cinda Lynn Hughes - corresponding Secretary

Annual Report Subcommittee

Terri Kline, Chairperson

Marilyn Gorospe

Frances LeMay

Kenneth Williams

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
ADVISORY COMMITTEE FOR EXCEPTIONAL CHILDREN

During the rather brief history of special education programs and services within the Bureau of Indian Affairs (BIA), countless dedicated individuals have attempted to meet the needs of American Indian and Alaska Native handicapped students. Unfortunately, many of these efforts were not supported in a consistent manner through clearly written policies, administrative support or adequate human and financial resources. The result was a "hit or miss" system of educating handicapped children that depended primarily upon flowthrough funds from the then Office of Education, Department of Health, Education and Welfare for support.

This situation began to improve considerably in 1978 when the United States Congress directed the BIA to allocate from funds available for school operations $2 million for special education. Also, during this same year, Mr. Rick C. Lavis, Deputy Assistant Secretary for Indian Affairs, in a public address at a regional conference on Indian handicapped children declared that ". . .the Bureau of Indian Affairs is committed at the highest levels, to pursure vigorously a policy of educating handicapped children." It was also emphasized that the education of these children represented the BIA's "number one educational priority." Since then, Congress and the Department of the Interior/BIA have responded to the educational needs of handicapped children by: (1) establishing categorical special education funding; (2) increasing fiscal support for the education of handicapped children; (3) creating a Division of Exceptional Education within the Office of Indian Education Programs; (4) employing increased numbers of special education and related services personnel; and (5) publishing proposed special education rules and regulations.

As important as these advances are, much remains to be accomplished, as indicated by the reports contained within the Appendix of this report, if the more than 4,500 handicapped children and youth currently being provided special education and related services are to continue to receive such services. Not. to be forgotten are unserved and underserved Indian and Alaska Native handicapped children who have yet to benefit from an appropriate education. As the BIA special education program continues to develop, it is important that these programs relfect community input and involvement. To this end, the Advisory Committee for Exceptional Children can serve as a catalyst and focal point.

While these last several years have been marked by extensive change, the Education Amendments of 1978, P.L. 95-561, and the implementation of the Education for All Handicapped Children Act, P.L. 94-142, will continue to have a profound affect upon BIA Special education service delivery. These changes and the vast amount of information associated with these programs have challenged the Committee to become well informed and involved in numerous activities and issues. We believe that in its first year the Committee has provided a firm foundation for carrying out the Committee's commitment to work with the Department of Interior/BIA, Indian tribes and organizations, other federal and state agencies, advocacy groups and parents to seek full and appropriate educational opportunities for all handicapped children served by the Bureau.

Bruce A. Ramirez
President, BIA Advisory Committee
for Exceptional Children

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INTRODUCTION

In July, 1979, Secretary of the Interior Cecil D. Andrus, appointed fifteen (15) individuals to the Bureau of Indian Affairs Advisory Committee for Exceptional Children. The newly created committee was formed as a result of a provision of the Education for All Handicapped Children Act of 1975, P.L. 94-142, which requires states and other jurisdictions receiving financial assistant under this Act to have an advisory panel on the education of handicapped children appointed by the Governor or other governmental official authorized under law to make such appointments.

Duties

The committee has been chartered (see Appendix) in accordance with the Federal Advisory Committee Act, P.L. 92-463, and is presently the only such advisory group within the Department related to Indian Education. The duties of the committee are to

Comment publicly on the BIA Annual Program Plan;

Comment on proposed regulations and the procedures for the distribution of funds;

Advise the Secretary of the Interior through the Assistant Secretary of Indian Affairs of unmet needs in the education of Indian or Alaska Native handicapped children; and

Assist in developing and reporting such information as may help BIA serve Indian or Alaska Native handicapped children.

Membership

The Advisory Committee is composed of individuals concerned with and/or involved in BIA special education programs and services and includes the following kinds of persons: handicapped individuals, parents of handicapped children, teachers and adminstrators of special education programs and local school officials. In addition to professional, consumer and tribal diversity the committee is reflective of the administrative organization of the Bureau as well as the "national" nature of its school system. Accordingly, each member was selected to represent the concerns to the entire system or a given Area Office as indicated below:

Area Office	Advisory Committee Members
Aberdeen	Ms. Evelyn Gabe
Albuquerque	Ms. Marilyn Groospe
Anadarko	Ms. Cinda Lynn Hughes
Billings	Ms. Debrorah LaCounte
Eastern	Ms. Teresa L. Kline
Juneau	Ms. Elvina Turner
Minneapolis	Ms. Cora Andrews
Muskogee	Ms. Geneva Horsechief
Navajo	Mr. Benjamin Lee
Phoenix	Mr. Kenneth Williams
Portland	Ms. Barbara Murphy
Sacramento	Ms. Janice Yerton
At-Large	Ms. Frances LeMay
At-Large	Mr. Lafe Altaha
At-Large	Mr. Bruce Ramirez

Each member of the committee serves for a three year period with five members replaced each year (see summary of Washington, D.C. meeting for committee members terms of office).

Annual Report

In addition to its other duties the committee is required to report by July 1 of each year concerning its activities and suggestions to the Assistant Secretary for Indian Affairs.

Other Activities

The Advisory Committee is required to meet at least three times a year and it has been the position of the committee that these meetings should be held where possible at different locations throughout the Bureau to allow for maximum input from those in different regions, besides regularly scheduled meetings committee members attend and participate in a wide variety of meetings and conferences concerned with the education of handicapped children, youth and adults throughout the BIA, as well as similar activities concerned by other federal and state agencies and Indian tribes and organizations.

Where to obtain more information

Those interested in obtaining more information about Advisory Committee activities or wishing to bring a concern and/or recommendations to the Committee's attention can do so by contacting any of the officers or members directly or at the following address:

Bureau of Indian Affairs Advisory
Committee for Exceptional Children
U.S. Department of the Interior
Office of Indian Education Programs
Code 507
18th and C Streets, N.W.
Washington, D.C. 20240

PART I

ADVISORY COMMITTEE MEETINGS

1979-80 BIA ADVISORY COMMITTEE FOR EXCEPTIONAL CHILDREN [ACEC] MEETINGS

Washington, D.C.	July 10-11, 1979
Salt Lake City, Utah	August 22-23, 1979
Phoenix, Arizona	October 26-27, 1979
Albuquerque, New Mexico	January 25-26, 1979

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Summaries of Full Advisory Committee for
Exceptional Children (ACEC) Meetings

Washington, D.C.

The first official meeting of the BIA, Advisory Committee for Exceptional Children was held at the Howard Johnson Inn, Crystal City, Virginia, July 10-11, 1979.

In addition to meeting with Dr. Kathleen Brady and the staff of the Division of Exceptional Education the Committee was addressed by Mr. Rick Lavis, Deputy Assistant Secretary for Indian Affairs. Ms. Mary Howard, Department of the Interior Committee Management Offices and Mr. Earl Barlow, Director of the Bureau Office of Indian Education Programs. Other individuals making presentations to the Committee included Mr. Martin Gerry, a consulting attorney to the Division of Exceptional Education, who was reviewing P.L. 95-561 in terms of its special education implications and Dr. Charles Cordova, State Plan Officer, Bureau of Education for the Handicapped, U.S. Department of Health, Education and Welfare, who explained applicable provisions of P.L. 94-142, The Education for All Handicapped Children Act, and the annual program plan process. Mr. Roland Johnson and Mr. Manny Moran of the Indian Health Service accompanied by Governor Floyd Correa and Victor Sarracino of the Pueblo de Laguna and Mr. Delfin Lavato of the All Indian Pueblo Council, also made a presentation about the Indian Childrens' Village program.

The Committee also elected officers and determined the following terms of office for each of the committee members.

One-Year Term	Two-Year Term
Marilyn Gorospe	Lafe Altaha
Terri Kline	Cora Andrews
Frances LeMay	Geneva Horsechief
Barbara Murphy	Cinda Lynn Hughes
Bruce Ramirez	Benjamin Lee

Three-Year Term

Evelyn Gabe
Deborah LaCounte
Elvina Turner
Kenneth Williams
Janice Yerton

The Committee also discussed a wide variety of organizational details and made tentative plans for future meetings.

Salt Lake City, Utah

The second meeting of the ACEC was held at the Ramada Inn, Salt Lake City, Utah, August 22-23, 1979.

The primary purpose of this meeting was to meet with all of the Bureau Area Office Special Education Coordinators and to review and comment on the Department of the Interior/BIA FY 1979 Annual Program Plan required for funding under Part B of the Education of the Handicapped Act as amended by P.L. 94-142.

Special Education coordinators making presentations about the availability of special education services within each Area Office included: Mr. Bruce Pray - Aberdeen Area, Ms. Ann Crawley - Albuquerque Area, Ms. Judy Connywerdy - Anadarko Area, Ms. Noel Malone - Eastern Area, Mr. Charles Christian - Juneau Area, Mr. Dick Wolfe - Minneapolis Area, Mr. Tom Patterson, Muskogee Area, Mr. Norman Wilcox - Navajo Area, Rosella Lawrence - Phoenix Area and Mr. Al Ledford - Portland Area. Additional presentations were given by Mr. Pray, regarding and development of a screening instrument for use by BIA schools and Ms. Crawley, who provided an update on the "Indian Children's Program". Dr. Brady, Acting Chief, Division of Exceptional Education, also met with the Committee to discuss the difficulties of employing special education personnel, the inaccuracy of the tentative allotments, and the question of the continuation of the special education administrative unit as a seperate division (see recommendation).

After reviewing and commenting on the Annual Program Plan (see recommendations) the Committee formed an Ad Hoc subcommitte to develop and complete the Committees Annual Report to the Secretary of the Interior. Benjamin Lee volunteered to draft a philosophy statement for consideration by the full committee. The Committee discussed numerous organizational details including future meetings, notice to the Indian Education and special education groups and organizations prior to each meeting, agenda items and the development of mailing lists. The Committee also reviewed and developed recommendations concerning the publication entitled **Public Law 94-142: A Manual for Parents of Handicapped Children** (see recommendations).

Phoenix, Arizona

The third meeting of the ACEC was held at the Los Olivos Hotel in Phoenix, Arizona, October 26-27, 1979.

Dr. Brady, Acting Chief, Division of Exceptional Education addressed the Committee and reviewed the budgeting systems for 3100 and P.L. 94-142 special education funds, the Bureau's response to the U.S. General Accounting Office Report.

Mr. Carlyle Cuellor and Mr. Warren Joseph also addressed the Committee concerning the status of the Indian School Equaliziation Program (ISEP). Mr. Pete Soto, Assistant Area Director and Ms. Rosella Lawrence, Special Education Coordinator of the Phoenix Area Office provided the Committee with an overview of BIA special education services within Arizona, Utah and Nevada. Agency level special education coordinators addressing the committee included: Ms. Sylvia Wimmer (Papago Agency) and Ms. Norma Wolfslaw (Salt River Agency) accompanied by Mr. Mike Roberts. Ms. Helen Wieczkiewicz, Program Specialist for the Washing School District in Phoenix, Mr. Jerry Kee, Arizona School for the Deaf and Blind and Ms. Gail Harris, Coordinator of American Indian Professional Training in Speech Pathology and Audiology Program presented overviews of their programs.

In addition to attending to numerous organizational matters, the Committee formed a work group to study the U.S. General Accounting Office Report and suggest recommendations. The Annual Report Subcommittee continued to make plans for the preparation of the annual report.

Albuquerque, New Mexico

The fourth meeting of the ACEC was held at the Sheraton Old Town Hotel in Albuquerque, New Mexico, January 25-26, 1980.

Prior to the meeting several members of the committee visited the special education program at Sky City Community School and the Acoma Early Childhood Development Program, a tribal program that serves very young handicapped children.

Dr. Charles Cordova the first director with a permanent status of the Division of Exceptional Education met with the Committee concerning numerous BIA special education matters including special education regulations, the FY 1980 Annual Program Plan and pre-school handicapped children. In addition to providing an overview of special education service delivery within the Albuquerque Area Office Ms. Ann Crawley discussed the status of the IHS/BIA Indian Children's Program pilot project. Other individuals making presentations included Mr. Victor Sarracino, Director, Laguna Tribal Education Division and Ms. Carol Baker, Office of Indian Education Programs, who gave an in depth presentation of the ISEP.

Mr. Bruce Ramirez and Ms. Marilyn Gorospe of the Advisory Committee also made presentations. Mr. Ramirez distributed and discussed products developed by the American Indian Special Education Policy (AISEP) Project of the Council for Exceptional Children. Ms. Gorospe provided an account of some of the difficulties she had experienced in securing full and appropriate services for her handicapped child at a local BIA day school.

After taking care of organizational matters the Committee received reports from subcommittees and work groups. Concern was expressed by the Committee on a number of matters including the U.S. General Accounting Office Report; the lack of Division of Exceptional Education involvement with the work of P.L. 95-561 Standards Task Force; certain provisions of the ISEP that appears to negatively impact upon the special education program; training opportunities for Indians and Alaska Natives interested in careers in special education and related services areas; the IHS/BIA Indian Children's Program pilot study; and the negative impact that late travel authorizations and reimbursements were having on the Committee (see recommendations).

Other Activities and Planning/Work Meetings

Several Advisory Committee members attended the BIA Special Education Coordinators in service Training Meeting in Sioux Falls, South Dakota, May 21-23, 1980. In addition to taking part in the various training sessions, committee members participated in a working session concerned with organizational matters and staff support from OIEP. Prior to the meeting members of the Committee received copies of the National Association of State Boards of Education and Indian Education Training, Inc. publication entitled **The Consortium for Indian Handicapped Children: A Report**. The report is a result of a series of nationwide meetings held in 1978 and attended by state and federal education personnel, representatives of Indian tribes and advocates. Because some of the concerns and recommendations detailed in the report relate to BIA education the summary has been included in the appendix as reference.

A fifth meeting of the full Advisory Committee was scheduled at the Holiday Inn (next to Dulles International Airpost), Sterling, Virginia, June 26-28, 1980. Dr. Cordova, Chief, Division for Exceptional Education presented a briefing on BIA special education programs and activities and presented each of the members of the Advisory Committee with a copy of National Geographic Society's **The World of the American Indian,** in appreciation for their efforts during the past year.

Additional presentations were made by Ms. Mary Howard, Department Committee Management Officer, U.S. Department of the Interior regarding the selection process for the ACEC members. Ms. Noel Malone, Special Education Coordinator, Eastern Area Office regarding the scope of Special Education programs within her area; Dr. Ray Meyers, State Plan Officer, Office of Special Education accompanied by Mr. Mike Ward, Education Program Specialist regarding the Annual Program Plan approval process/administrative reviews, and Ms. Linda Moore, Office of SPED and Rehabilitative Services concerning the "Indian Initiative" within the Department of Education.

Committee actions consisted of numerous organizational details with much emphasis on finalizing annual report and philosophy statement.

PART II

RECOMMENDATIONS

AND

REVIEW OF THE DEPARTMENT OF THE INTERIOR/BIA FY 1979

ANNUAL PROGRAM PLAN

RECOMMENDATIONS

NEED FOR PARENT INFORMATION: At the request of the Division of Exceptional Education, the Advisory Committee reviewed a manual, ie. **Public Law 94-142: A Manual for Parents of Handicapped Indian Children,** developed by the Sacramento Area Office for parents of Indian handicapped children. While the committee has some concerns about the accuracy and suitability of this particular document, there is a critical need for such information. It was unanimously recommended that the BIA develop and disseminate a more concise and straightforward handbook or brochure on the rights of Indian and Alaska Native handicapped children and their parents. To insure its appropriateness, it was also unanimously agreed that a working advisory group composed of Indian parents of handicapped children be formed to assist in the development of the document.

PLACEMENT OF THE DIVISION OF EXCEPTIONAL EDUCATION WITHIN OIEP: In the past the lack of a Division of Exceptional Education has impeded attempts to develop and implement comprehensive special education services for Indian and Alaska Native exceptional students. For this reason the Advisory Committee is in strong support of the establishment and full staffing of the Division of Exceptional Education within the Office of Indian Education Programs. Because of the all too frequent reorganizations within the BIA that could affect this permanent division, the Advisory Committee would expect to be informed and consulted about any anticipated move within the BIA and DOI that would alter the present status of the Division.

SPECIAL EDUCATION AND RELATED SERVICES TRAINING OPPORTUNITIES FOR INDIANS AND ALASKA NATIVES: In view of Indian Self-determination, Indian Preference and Section 1135 of P.L. 95-561, it is recommended that the Division of Exceptional Education and the Office of Indian Education Programs, develop plans and implement procedures to provide pre-service and in-service training opportunities for American Indian and Alaska Native individuals seeking professional training including certification/licensure in Special Education and related services areas. It is further recommended that this training be undertaken where appropriate in conjunction with other agencies within the Department of Education, the Department of the Interior and the Department of Health and Human Services.

GAO REPORT AND THE NEED FOR SPECIAL EDUCATION RULES AND REGULATIONS: During the Phoenix, Arizona meeting, the Advisory Committee for Exceptional Children discussed the September, 1979 U.S. General Accounting Office (GAO) report entitled **The Bureau of Indian Affairs is slow in Providing Special Education Services to All Handicapped Indian Children.** While the Advisory Committe received a rather detailed explanation from the Division of Exceptional Education regarding the fairness of this report, the committee feels that the problems noted in the report need to be addressed in a straightforward and timely manner.

Foremost among the GAO finding was the lack of policies for providing special education services to American Indian and Alaska native handicapped Indian children and youth. In view of the difficulties that are being encountered with the implementation of Education for All Handicapped Children Act of 1975. P.L., 94-142, there appears to be an ever-present need for special education rules and regulations throughout the Bureau school system. The absence of such provisions makes it impossible for handicapped students and their parents to hold the Bureau accountable for providing appropriate special education and related services. For these reasons, the Advisory Committee urges the Assistant Secretary for Indian Affairs and the Director of the Office of Indian Education Programs to propose and adopt rules and regulations to govern the provision of special education and related services to handicapped children for the 1980-81 school year in consultation with tribes, school personnel, school boards, parents of handicapped children, advocates and others concerned about the education of Indian and Alaska Native handicapped children.

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BIA/IHS INDIAN CHILDREN'S PROGRAM PILOT STUDY: During the past year (1979-80) the committee was requested to make recommendations concerning the BIA/IHS Indian Children's Program pilot study. While the committee has yet to receive the results of this study, several individuals expressed their concern to the committee about the need for better cooperation from BIA education, BIA Social Services and IHS. In order to maximize resources and insure delivery of services in other agencies it is urged that these agencies develop and adopt plans for the coordination of services to exceptional individuals.

INDIAN SCHOOL EQUALIZATION PROGRAM FORMULA: During the Albuquerque, New Mexico meeting, the Advisory Committee for Exceptional children discussed the Indian School Equalization Program with Ms. Carol Baker of the Office of Indian Education Programs. In particular, it was pointed out that there was a provision within the Local Educational Financial Plan regulations (31h.62(d) of Subpart E) that allows schools to plan to expand as much as 20 percent of the funds generated for handicapped students for special education, it is conceivable that as much as $1.4 million could be used for other purposes based on a total special education appropriation of $7 million.

It appears that this provision sanctions the practice of using funds generated by handicapped students with special learning needs for some other purpose. It also appears that handicapped children are being discriminated against since no other group of children with special needs is being similarly treated.

In view of the fiscal and other demands facing local schools, it is all too likely that the handicapped may not be the benefactors of funds generated to meet their special needs. This is precisely the kind of problem that has undermined programs for the handicapped over the years. For these reasons, the Advisory Committee urges the Assistant Secretary for Indian Affairs and the Director of the Office of Indian Education Programs to amend this particular regulation to require that 100% of the funds generated by the formula for the education of handicapped students be expended for special education and related services.

EDUCATION STANDARDS AND PROPOSED SPECIAL EDUCATION REGULATIONS: The Office of Indian Education Programs is developing and adopting Education Standards for the education of American Indian and Alaska Native students. At the same time, the Division of Exceptional Education is preparing proposed rules and regulations for Special Education. The Advisory Committee is concerned that there appears to be little coordination of these two activities. To minmize confusion and conflict in the development, adoption and implementation of these policies, it is recommended that the Education Standards incorporate, where appropriate, Special Education policies.

NEED FOR COMMITTEE MEMBERS TO RECEIVE TRAVEL AUTHORIZATIONS AND REIMBURSEMENTS IN A TIMELY FASHION: Unfortunately, the Advisory Committee has had less than complete participation from several members, which many members believe is largely attributable to the lack of coordination and support from the Central Office. Many of the members cannot afford to finance their travel to the meetings unless they have received travel reimbursements from the previous meetings. The reimbursements, therefore, must be submitted and received on a more timely basis. The travel authorizations along with the prepaid tickets should also be sent out so that members are in receipt of them in sufficient time to make arrangements to attend the meeting. Travel authorizations should also cover a period that will allow members adequate time to make it to the meeting and to return home taking into account some of the unique circumstances of some of the members relative to remote areas and familiar commitments. The Advisory Committee recommends that these areas receive immediate attention. By addressing these concerns, it is hoped that the committee members would be more responsive in terms of their participation in Advisory Committee activities.

Comments of the
BIA Advisory Committee for Exceptional Children
Respecting the
BIA/Department of the Interior FY 79 Annual Program Plan Amendment Revised
for Part B of the Education of the Handicapped Act as amended by P.L. 94-142

November 23, 1979

I. GENERAL COMMENTS

We recommend that the following be changed throughout the Annual Program Plan (APP):

1. That American Indian or Indian be used in all instances where "native" is used. This would be more consistent with current BIA policy and terminology.

2. That all references to days mean consecutive days rather than school days. This is not clear in the APP, and could be a source of confusion if not clarified.

3. That LEA not be used interchangeably to refer to Area Office, Agency Office, or local school. We have noted instances in our specific comments where distinctions are called for, however, there are undoubtedly other instances that may require clarification.

4. That some consideration be given to having a definitions section so that commonly used terms could be explained. This would be particularly helpful to those unfamiliar with many of the special education and BIA terms.

II. SPECIAL COMMENTS

Section I, Public Notice and Opportunity for Comment

In view of the lack of public input that is being accorded the Annual Program Plan (APP), the Advisory Committee recommends the following changes in this section. First, the Committee supports the efforts of the BIA Office of Indian Education Programs to make the APP available to the Agency Offices in addition to the Area Offices. The Committee believes that it is unrealistic to expect interested individuals to travel to the Area Office, which is often located in another state, to review the APP.

Second, the APP (p.4) indicates that a hearing will be held in order to obtain more public input. In most instances, the hearings are held at the Area Office, however, these officers are not readily accessible to all those within the boundaries of the Area. For this reason, the Advisory Committee recommends that public hearings be conducted at the Agency Office level to encourage greater public participation.

Third, it is stated (p.4) that letters will be sent to all Bureau operated and contracted school officials, heads of Bureau operated programs for the handicapped and parent organizations concerning the hearing and opportunity for review and comment. In addition, we would recommend that the Area Office and/or BIA Office of Indian Education Programs also provide notices to tribal governing bodies and/or tribal education committees, and where appropriate, to tribal education agencies.

We would further suggest that the notices sent to BIA operated and contracted schools be posted in a public place so that others will have an opportunity to be informed about the APP. We would also like

to suggest that the Area Offices maintain a listing of the parent organizations that are annually provided a notice of the availability of the APP.

Fourth, while it is indicated that hearings will be held, there appears to be much variability in how this activity is carried out. In order to bring about consistency to the conduct of the hearings, it is recommended that the BIA Office of Indian Education Programs develop procedures or guidelines, including the availability of translators, regarding this most important activity.

Fifth, it is stated that comments may be submitted to the Area Office and/or Central Office for review and action. Unfortunately, the APP does not identify an official by name and position, address or phone number, so that interested individuals are aware of the individual to whom they can address their comments and at the same time expect a response. In this regard, we would recommend that such information be specified within the APP.

Section II, Right to Education Policy Statement

This section states that all handicapped Indian children ages 3 through 21 enrolled in or eligible for enrollment in BIA operated, contract or cooperative schools have "the right to a free appropriate public education." Because the right to education policy statement is qualified by "enrolled in or eligible for enrollment in", the Advisory Committee feels that these phrases need to be defined so that it is clear who is eligible to receive services. In view of the various age ranges served by most BIA schools, there also seems to be some question regarding the availability of such services to children 3-5 and 19-21. In this regard, it is recommended the ages at which children are to be provided services be clarified.

It is also indicated that the BIA right to education policy has been mandated by the Assistant Secretary for Indian Affairs and applies to both education and social services. Since the policy statement, i.e., federal law, regulation, IAM or BIAM Manual, etc., may clarify the concerns raised above, the Advisory Committee recommends that the policy statement be included as a part of the APP.

This section also states that the Indian Health Service (IHS) is not subject to the Assistant Secretary's policy statement. In view of the pilot project being undertaken by BIA and IHS, it is recommended that BIA assure that such diagnostic services comply with the requirements of P.L. 94-142.

This section further states that handicapped children have "a right to a free appropriate public education." While a definition for "free" is provided, no definition is provided for "appropriate public education." It is recommended that appropriate public education be defined to emphasize special education and related services.

It is also unclear what rights Indian handicapped children who are not enrolled in a BIA school and who are out of school have under the APP. Again, it is hoped that the policy statement would clarify the rights of such children, however, if this is not the case, it is suggested that the APP specify the rights of these children.

Section III, Full Education Opportunities Goal and Timelines

This section includes information about program accessibility. It is further indicated that the Division of School Facilities conducted an accessibility study and that funds have been requested based on changes recommended in the survey. The Advisory Committee would like to request a copy of the completed report, and would further recommend that the amount of funding annually requested and the kinds of modifications by specific location be included in the APP.

Section IV, Policies on Priorities

The second paragraph of this section indicates that arrangements will be made immediately to provide needed services when a handicapped child is found to be receiving an inadequate education. It is recommended that this sentence be changed to make it clear that "it shall be the responsibility of the BIA operated or contracted school to provide special education and related services when a handicapped child is found to be receiving an inadequate education."

Section V, Child Identification

The first paragraph specifies that "all handicapped native children birth through 21 within the jurisdiction of the Bureau. . .shall be identified, located and evaluated." In view of the rather widespread confusion concerning the geographic areas where the BIA will conduct child identification activities, it is recommended that "within the jurisdiction of the Bureau" be clarified so that parents, educators and tribal officials understand BIA child identification responsibilities.

The third paragraph of this section specifies who is included in the annual child find conducted by each Area Office. Again, discussion centered on the need for clarification concerning whether this requirement also includes BIA contract schools. It is also suggested that "within the jurisdiction of the Area" be defined. Does this refer to educational jurisdition or a more general jurisdiction?

The first paragraph on page 15 indicates that Area Offices presently not having agreements will begin contacting states to delineate each's respective child find activities. Rather than merely contact states, we would recommend that Area Office meet with states and develop written agreements concerning each's child find duties. Moreover, the Advisory Committee, after discussing the various educational agencies involved in serving Indian communities, would suggest that a statement be added indicating that Area Offices will cooperate with public schools and Head Start programs in conducting their child identification activities.

Section VI, Individualized Education Program

The first paragraph of this section indicates that each local education agency (LEA) will develop an individualized education program (IEP) for each handicapped child receiving special education and related services. Upon inquiry, the Committee was informed that LEA is used interchangeably to refer to the Area Office, Agency Office, or the local school. In view of the changes being brought about as a result of P.L. 95-561 and the clarification from BIA staff that it was their intent that the development of the IEP was to be the responsibility of the local school, we would recommend that LEA be deleted and local school inserted.

Statement No. 4 of this section mentions an IEP planning conference. The word "planning" was found to be confusing since this would seem to indicate that another meeting would follow to develop the IEP. Rather than refer to the meeting as a planning conference, it is suggested that the word "planning" be deleted in provisions No. 4 and 5.

Statement No. 12 states that the Area Office will develop and maintain an IEP for handicapped children placed in or referred to a private school/facility by the BIA. This section is confusing, particularly since "BIA" is not more specifically defined. It would appear that an artificial distinction is being made between kids who may require placement in a private school facility and those whose needs can be met by the local school. Unless the Bureau can provide a clarification of the section, we recommend that the local school maintain this responsibility. If need be, the local school could request assistance from the Area Office, however, it has a responsibility to provide an appropriate education to all idenified identified handicapped children regardless of the severity of their handicapping condition.

Statement No. 13 makes reference to "a representative of the Bureau" being present at meetings to review the IEP of a child placed in a private school/facility. In keeping with our previous suggestion, it is recommended that the Bureau representative be specified to be an individual from the local school.

Statement No. 14 indicates that for children placed or referred to private schools by the Bureau, compliance with IEP requirements remains with the Bureau. Since the Bureau is composed of many different offices and levels, we feel that compliance by "the Bureau" needs to be clarified.

Section VII, Professional Safeguards

The Advisory Committee discussed at some length the question of under what conditions, i.e., age, marital status, etc., a student can request a hearing on his/her own initiative (Statement No. C-1). This appeared to be unclear and we suggest that these conditions be clarified and set forth in the APP.

Statement No. C-9 of this section states that due process hearing procedures will follow the hearing procedures established by 45 C.F.R. 80.9. Since these procedures are not specified in the present plan, we suggest that these procedures be included in the Appendix of the APP.

Statement No. C-11 discusses the child's status during the hearing procedures. The second paragraph makes reference to initial admission to "public school." We suggest that "public school" be changed to BIA operated, contracted or cooperative schools.

Statement No. D-1 specifies that the parent has a right to an independent educational evaluation at "public expense." Since the APP applies to the BIA, it is suggested that it be specified that "public expense" means at the expense of BIA.

Statement No. D-4 indicates that whenever a local school pays for an independent educational evaluation, the criteria, location and qualifications of the examiner must be the same as the criteria used when the local school initiates an evaluation. The Committee is concerned that use of the word "same" is too restrictive and suggests that "comparable" be used instead.

Statement No. E-1 sets forth the conditions under which a surrogate parent will be assigned. While it is not mentioned, the Advisory Committee would like to know if there is consideration given to the child's wishes or preferences in the assignment of the surrogate. This same paragraph further indicates that a representative selected by the parent may participatein the IEP meeting at the discretion of the parent. Is there an age at which a student has discretion in selecting a representative to attend the IEP conference?

Statement No. F-4 under Access to Records mentions "participating education agency." It is suggested that this term be defined to include all types of Bureau schools and/or Area and Agency Offices if applicable.

During the course of our discussion of the Confidentiality section, the Advisory Committee was informed that in instances where psychological services are contracted, the individual psychological report is maintained at the Area or Agency and a copy is sent to the local school. In view of the need to maintain the confidentiality of such records, it is recommended that the individual evaluation reports be maintained at the local school and that a certified statement attesting to the completed report be kept at the Area or Agency Office for purposes of maintaining contracting records.

Section VIII, Least Restrictive Environment

Statement No. 4 indicates that the responsible Area Office must provide or arrange for the provision of alternative placement settings in Appendix F. In keeping with our previous recommendations, it is suggested that this be a responsibility of the local school. Again, the Area Office can provide assistance if needed.

Statement No. 5 indicates that "placement as close as possible to the child's home" shall be interpreted to mean "as close as possible among those appropriate education programs operated, directly or indirectly, by the Department of the Interior." It is recommended that this phrase be restated so that the test of closeness is not the nearest BIA operated, contracted or cooperative school, but rather the closest appropriate program whether that be Bureau or non-Bureau. For example, if the parents agree, a handicapped child could board at a BIA school and attend a nearby public school rather than attend another BIA school.

Section IX, Protections in Evaluation Procedures

Statement No. A-1 states that no single test or type of test will be used as sole criterion for determination of placement. In view of the fact that the IEP determines placement, it is suggested that this statement refer to a determination that the child is handicapped and in need of special education and related services.

Statement No. A-3 indicates that evaluations must be made by individuals expert in the area of the suspected disability. It is recommended that "expert" be changed to "certified personnel meeting state requirements" to ensure that qualified individuals are completing the evaluations.

Statement No. A-4 states that "evaluation materials will be administered in the child's native language, unless it is not feasible to do so." However, nowhere is it mentioned that a determination will be made of the child's native language. If this is not done prior to conducting the evaulation, the Bureau may be administering tests in the native language when it is inappropriate to do so. Of course, the opposite could also be true. For these reasons, it is recommended that the native or primary language of the student be determined prior to conducting the evaluation.

Section X, Comprehensive System of Personnel Development

The Advisory Committee was informed that this section or parts of the section were developed almost a year ago. With regard to the Input and Implementation subsection, it is suggested that this part be updated annually.

The Annual Needs Assessment subsection indicated that the Bureau surveyed all of its schools in April, 1978. In order for the Advisory Committee to better understand the personnel needs of the BIA, we would like to request a copy of the results of the 1978 survey. Further, the Committee would like to be informed of the results of the 1979 as well as future needs assessments to determine if sufficient numbers of qualified personnel are available throughout the Bureau.

Although it is not a requirement of the APP, the Advisory Committee is disappointed that the Bureau has not seen fit to include a subsection to increase the number of Indian special educators and related services personnel. This is unfortunate particularly in view of the Bureau's Indian preference policy. For these reasons, we recommend that the BIA develop and implement a plan to increase the number of Indians and Alaska Natives qualified to serve as special educators and related services personnel. It is further recommended that this plan be incorporated as a regular part of the BIA APP.

Section XI, Participation of Private School Children

The Advisory Committee found this particular section to be very confusing. For example, it is assumed that states will provide for the participation of private school children on reservations, however, in cases where a state is not participating under P.L. 94-142, such as New Mexico, the Bureau may have to assume this responsibility. Moreover, the last sentence indicates that the Bureau will provide a free appropriate education to Indian handicapped children not receiving special education and who are voluntarily attending a private school. Since it is not stated that this responsibility is limited to on or near reservations, one could assume that this responsibility extends state-wide. For these reasons, we suggest that this section be refined so that the Bureau's responsibilities can be clarified.

Section XII, Placement in Private Schools

The first sentence in this section states that "when an eligible handicapped native child has been identified as being handicapped and in need of exceptional education. . ." We recommend that the word "handicapped" be deleted between "eligible" and "native" and that "exceptional education" be changed to "special education."

The last sentence of the first paragraph states that such children, prior to placement, remain the responsibility of the Area Office. In keeping with our other recommendations, we recommend that this be a local school duty.

The second paragraph indicates that handicapped children placed by BIA in private facilities will have all the rights they would have if educated in a public school. We recommend that public school be changed to BIA operated, contracted or cooperative school.

Section XIII, Recovery of Funds for Misclassified Children

The first sentence of this section gives the misconception that the Bureau does not have a procedure for the recovery of funds allocated to Areas and schools. Upon discussion with BIA staff, it was found that this was not the case. It is suggested that this fact be emphasized rather than the fact that the Bureau does not receive its funds from the Bureau of Education for the Handicapped on the basis of a child count.

Section XIV, Hearing on LEA Application

The first paragraph indicates that the Central Office has the final approval authority for the LEA application. We suggest the official, i.e., the Director, Office of Indian Education Programs, who has this duty be specified in the APP.

Section XV, Annual Evaluation

Again, this section makes reference to local schools and Area Offices, yet uses the general term LEA. It is suggested that distinction be made when this section makes different requirements of these schools and offices.

The last statement of this section indicates that the BIA Central Office will produce a total evaulation report. The Advisory Committee suggests that this be stated to indicate that this responsibility be that of the Division for the Education of the Exceptional Child of the BIA Office of Indian Education Programs.

The Advisory Committee would also like to request that the findings of the annual evaluation of communicated to the Committee.

Section XVI, Additional Requirements

Under subsection A, it is indicated that the Director, Office of Indian Education Programs is delegated the authority to ensure that all handicapped children on reservations serviced by schools operated for Indian children by the Department of the Interior are provided a free appropriate education. Does this also include contract schools? We suggest that such schools be included since they are included in oher other sections of the APP.

Subsection C discusses Complaint Procedures, and it is not clear to whom one should direct his complaints. It is recommended that an official be specified by name, title, address and telephone number so that it is clear who is responsible for receiving and following up on complaints.

Under subsection G which discusses the Advisory Committee, it is recommended that this subsection be changed to be specific to the Committee's charter. For example, under 3a, the Committee advises the Secretary of the Interior through the Assistant Secretary of Indian Affairs of the unmet needs in the education of handicapped Indian or Alaska Native children.

Under subsection K, it is stated that the Bureau receives no "state" funds. This is not entirely true since the BIA does receive funds (3100) for the education of handicapped children. Moreover, there does not appear to be anything in this section that prohibits commingling of 3100 funds and U.S.O.E. flowthrough funds for the handicapped. It is recommended that a statement to this effect be included.

Section XVII, Description of Uses of Part B Funds

This section indicates that the Central Office will develop needs assessment for facilities, personnel and services. Beyond identifying needed resources, the Advisory Committee would like to recommend that a statement be added specifying that the Central Office, i.e., Director, Office of Indian Education Programs, would be responsible for developing and implementing plans to correct the inadequacies identified through the various needs assessments.

The Advisory Committee would like to have a definition of excess cost included in the APP. It would also be helpful to have examples of the kinds of services that such costs could cover. For example, would it be possible to use such funds for the education of children birth through 5?

APPENDICES

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APPENDIX A

BUREAU OF INDIAN AFFAIRS
PROJECTED DECEMBER FY 1979 CHILD COUNT

Mentally Retarded	831
Hard of Hearing	108
Deaf	6
Speech Impaired	883
Visually Handicapped	42
Seriously Emotionally Disturbed	286
Orthopedically Impaired	39
Other Health Impaired	30
Specific Learning Disabled	2281
Multi-Handicapped	343
Total	4506

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APPENDIX B

CHAPTER OF THE BUREAU OF INDIAN AFFAIRS ADVISORY COMMITTEE FOR EXCEPTIONAL CHILDREN

OFFICIAL DESIGNATION

The official designation of this committee shall be:

BUREAU OF INDIAN AFFAIRS ADVISORY COMMITTEE FOR EXCEPTIONAL CHILDREN

PURPOSES

1. This committee shall serve only in an advisory role.

2. They shall comment publicly on the annual program plan.

3. They shall comment on proposed rules, regulations and procedures for the distribution of funds.

4. They shall advise the Secretary of the Interior through the Assistant Secretary of Indian Affairs of the unmet needs in the education of handicapped Indian or Alaskan Native children.

5. They shall assist in developing and reporting such information as may help the Bureau of Indian Affairs serve handicapped Indian or Alaskan Native children.

TIME LIMIT

This committee is required by P.L. 94-142, and is expected to continue beyond the forseeable future. However, It's continuation will be subject to bienneal termination and renewal provisions of Section 14 P.L. 92-463.

OFFICIAL TO WHOM THE COMMITTEE REPORTS

The committee reports to the Assistant Secretary of the Interior for Indian Affairs.

ADMINISTRATIVE SUPPORT

Administrative support will be provided by the Department of the Interior-Bureau of Indian Affairs.

DUTIES OF THE COMMITTEE

The duties shall be as described in the purposes and in addition they shall.

1. Report by July 1 of each year its activities and suggestions to the Assistant Secretary for Indian Affairs.

ESTIMATED ANNUAL COST

Activities of the committee will require an estimated $25,000.00 and one (1) man year of Federal employees support annually.

NUMBER AND FREQUENCY OF MEETINGS

The committee will meet at least three (3) times per year.

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MEMBERSHIP

1. The committee shall be composed of fifteen (15) members. Each shall serve a term of three (3) years with five (5) members replaced annually. Initially the terms will be staggered.
2. Membership on this committee shall be by appointment of the Assistant Secretary for Indian Affairs.
3. The committee shall consist of but not limited to:
   1. Handicapped individuals.
   2. Teachers of the handicapped.
   3. Parents of the handicapped.
   4. Special Education Program administrators.
   5. Local education agency officials.

4. A member may be terminated by the Secretary of the Interior at any time following formal notification for:
   1. Violation of Department of Interior rules and regulations.
   2. Conflict of interest.
   3. Repeated absence.
   4. Failure to discharge duties.

STATUTORY AUTHORITY

The statutory authority for this committee shall be P.L. 94-142.

COMPENSATION

Members may be reimbursed for allowable travel, per diem and expenses.

OFFICERS

The officers of this committee shall be President, Vice President, Corresponding Secretary and shall be elected annually from the membership of the committee. Their duties shall be:

1. President shall preside at all meetings.
2. Vice President shall serve in the absence of the President.
3. Corresponding Secretary shall receive all communications and reports to the committee.

_____
SECRETARY OF THE INTERIOR

_____ _____
DATE SIGNED DATE FILED

APPENDIX C

DIVISION OF EXCEPTIONAL EDUCATION
OFFICE OF INDIAN EDUCATION PROGRAMS
AND
AREA OFFICE SPECIAL EDUCATION PERSONNEL
DIRECTORY

Office of Indian Education Programs / Division of Exceptional Education

United States Department of the Interior
Bureau of Indian Affairs
Office of Indian Education Programs
Division of Exceptional Education
18th and C Streets, N.W.
Washington, D.C. 20245 (Mail Code 507) Phone 202-343-4071,2,3

Dr. Charles Cordova, Chief

Mr. Goodwin K. Cobb III, Education Specialist

Ms. Cathie Bacon, Education Specialist

Ms. Marie Emergy, Education Specialist

Ms. Dixie Owen, Education Specialist

Ms. Thelma Harjo, Secretary

Ms. Janice Ingram, Clerk

Area Office Special Education Coordinators

Aberdeen Area Office
Bureau of Indian Affairs
Federal Building
115 Fourth Avenue, S.E.
Aberdeen, South Dakota 57401

Education Specialist - Mr. Bruce Pray
Phone (605) 782-7496

Albuquerque Area Office
Bureau of Indian Affairs
5301 Central Avenue, N.E.
P.O. Box 8327
Albuquerque, New Mexico 87108

Education Specialist - Ms. Ann Crawley
Phone (505) 474-3161

Anadarko Area Office
Bureau of Indian Affairs
P.O. Box 368
Anadarko, Oklahoma 73005

Education Specialist - Ms. Judy Connywerdy
Phone (918) 743-7251

Billings Area Office
Bureau of Indian Affairs
316 North 26th Street
Billings, Montana 59101

Education Specialist - Mr. John Vandell

Juneau Area Office
Bureau of Indian Affairs
P.O. Box 3-8000
Juneau, Alaska 99801

Education Specialist - Mr. Emil Kowalcyz
Phone (907) 586-4115

Anchorage Field Office
P.O. Box 120
Anchorage, Alaska 995-1

Education Specialist - Mr. Chuck Christian

Minneapolis Area Office
Bureau of Indian Affairs
831 Second Avenue, South
Minneapolis, Minnesota 55402

Education Specialist - Mr. Dick Wolf
Phone (612) 725-2901

Muskogee Area Office
Bureau of Indian Affairs
Federal Building
Muskogee, Oklahoma 74401

Education Specialist - Mr. Tom Patterson
Phone (918) 736-2460

Eastern Area Office
Bureau of Indian Affairs
19th & Constitution Avenue, NW.W.
Washington, D.C. 20245

Education Specialist - Ms. Noel Malone
(703) 235-2571

Navajo Area Office
Bureau of Indian Affairs
P.O. Box 1060
Window Rock Arizona 86515

Education Specialist - Mr. Norman Wilcox
Phone (603) 479-5224

Phoenix Area Office
Bureau of Indian Affairs
P.O. Box 7007
Phoenix, Arizona 85011

Education Specialist - Ms. Rosella
Lawerence

Portland Area Office
Bureau of Indian Affairs
1425 Irving Street, N.E.
P.O. Box 3785
Portland, Oregon 97208

Education Specialist - Mr. Al Ledford
Phone (503) 468-4789

APPENDIX D

U.S. GENERAL ACCOUNTING OFFICE REPORT - "THE BUREAU OF INDIAN AFFAIRS IS SLOW IN PROVIDING SPECIAL EDUCATION SERVICES TO ALL HANDICAPPED CHILDREN"

COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

The Honorable Robert C. Byrd
Chairman, Subcommittee on the
Department of Interior and
Related Agencies
Committee on Appropriations
United States Senate

Dear Mr. Chairman:

Subject: The Bureau of Indian Affairs is Slow in Providing Special Education Services to All Handicapped Indian Children (CED-79-121)

Your February 16, 1979, letter requested that we conduct a review to determine the progress the Bureau of Indian Affairs has made in its elementary and secondary schools to

--achieve the Education for All Handicapped Children Act of 1975 mandate of providing a free and appropriate public education to all handicapped children between the ages of 3 and 18 not later than September 1, 1978, and

--hire 202 special education teachers and specialists provided for by the Congress in appropriating an additional $5 million in fiscal year 1979.

Our review at the Navajo and Phoenix area offices showed that the Bureau made some progress toward achieving this mandate, but had not complied with the act's requirement to serve all handicapped children. We visited 19 schools with a total of 883 handicapped children. At these schools, teachers identified 340 students, or 38 percent, receiving full special education services, 113 students, or 13 percent, receiving partial services, and 430 students, or 49 percent, receiving no services.

The lack of progress resulted because the Bureau did not

--implement and administer an effective program at an early date,

--identify and evaluate the handicapped children needing special education in a timely manner, and

--make sufficient efforts to recruit and hire needed special education personnel.

The Bureau did not take the initiative, after the act was passed in November 1975, to develop and administer a special education program in time to comply with the September 1, 1978, deadline. It was not until early in 1978 that the Bureau established an ad hoc division to manage a special education program. However, the division's effectiveness was limited because it was staffed with only four temporary program positions. The division also did not have direct authority over area offices and schools until an official division with an increased staffing level was created in March 1979, over 6 months after the compliance deadline. The Bureau's lack of timely emphasis and leadership adversely affected the development and progress of the program. Specific and comprehensive program guidelines were not developed and less than half of the identified handicapped students were actually receiving full special education services.

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In passing the Education for All Handicapped Children Act of 1975, the Congress found that there were many handicapped children participating in regular school programs who were not having a successful educational experience because their handicaps were undetected. The act provided for identification and assessment of handicapping conditions in children. The identification of the number of handicapped students, their location, and their handicapping conditions are vital first steps in providing special education services. Until these steps are completed the number of teachers needed cannot be determined. However, the Navajo and Phoenix area offices did not start assessing students immediately. Student assessments were started in August 1977, in the Phoenix area, and in January 1978, in the Navajo area. Although at the time of our review the two area offices had completed assessments on most students suspected of being handicapped, they had not yet assessed all suspected children.

The Congress provided the Bureau with an additional $5 million of special education funds in fiscal year 1979 to hire an estimated 202 special education teachers and other specialists. Although these personnel are essential to providing special education services, the Navajo and Phoenix area offices have made insufficient efforts to recruit and hire them. Consequently, many handicapped Indian children are not benefiting from special education services. The two area offices do have on board about 38 percent of the special education personnel that they have identified as needed. But their special education personnel needs may be greater than expected because some schools and agencies had not determined the number of personnel they need. In adition, the present staffing level is not a good indication of the effort put into hiring because most are not new hires but were converted from the title I program of the Elementary and Secondary Education Act. For example, 26 of the Navajo's 39 special education teachers and 6 of the 10 Phoenix special education positions were converted from the title I program.

In fiscal year 1978 the Bureau received $3.9 million for special education which was used primarily for student assessments. Funding was increased to $9.4 million in fiscal year 1979 primarily to allow the Bureau to hire an estimated 202 special education personnel. However, since the Bureau did not hire the necessary personnel, most of the funds were not spent and special education services have not been delivered as planned. The Navajo and Phoenix area offices received a special education allotment of about $5,092,000 in fiscal year 1979, but as of May 31, 1979, had only spent $797,000, or 16 percent.

We noted that the Navajo area office planned to spend special education funds for dormitory furniture, office supplies, and athletic equipment even though the Bureau's central office has not yet issued instructions which specify how special education funds should be used. Moreover, the Bureauy generally ignored the House Committee on Appropriations requirement that funds be used to hire 202 special education teachers and specialists.

CONCLUSION:

The Bureau is slow to comply with the mandate of the Education for All Handicapped Children Act of 1975 because of poor leadership and a lack of emphasis placed on the program. The other problems, such as the late start on the student assessments, the limited efforts to hire special education personnel, and the expenditure of funds for purposes other than hiring teachers are all a direct result of the lack of leadership and emphasis. This situation should show some improvement as the newly created division responsible for special education assumes the management of the program.

RECOMMENDATION TO THE APPROPRIATIONS COMMITTEES

We recommend that the Senate and House Committeese on Appropriations restrict the Bureau's fiscal year 1980 special education funds to hiring special education teachers and specialists. The committees should not allow the Bureau to use these funds for other purposes without congressional approval.

RECOMMENDATIONS TO THE SECRETARY OF THE INTERIOR

We recommend that the Secretary of the Interior direct the Assistant Secretary for Indian Affairs to:

--Determine the number of special education personnel needed by each location and develop a plan to hire those personnel at the earliest possible date.

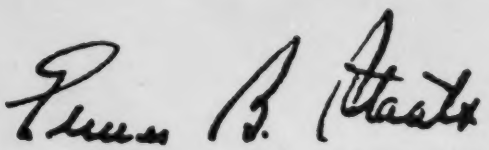
--Develop policies, guidelines, and realistic goals to meet the mandate of the Education for All Handicapped Children Act of 1975, for the delivery of special education services to all handicapped children in Bureau-operated schools.

Enclosure I describes the Bureau's special education program in the Navajo and Phoenix area offices and discusses the above issues in more detail.

Between February 23, 1979, and June 1, 1979, we contacted officials in the Bureau's Central Office, the Navajo and Phoenix area offices, seven agency offices, and 19 schools. At your request we did not take the time to obtain comments from the Department of the Interior on the matters covered in this report.

We will also send copies of this report to the Secretary of the Interior, the Assistant Secretary for Indian Affairs, Interior's Inspector General, and other interested parties.

Sincerely yours,



Comptroller General
of the United States

Enclosure

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THE BUREAU OF INDIAN AFFAIRS IS SLOW IN PROVIDING SPECIAL EDUCATION SERVICES TO ALL HANDICAPPED INDIAN CHILDREN

The Education for All Handicapped Children Act of 1975, Public Law 94-142, mandated that all handicapped children have available to them a free and appropriate public education which emphasizes special education and related services. Special education is specially designed instruction meeting the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction within hospitals and institutions. Related services are transportation, supportive services, speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The law established that special education services will be provided to all children aged 3 through 18 by September 1, 1978, and children aged 3 through 21 by September 1, 1980.

PROGRESS IN PROVIDING SPECIAL EDUCATION HAS BEEN LIMITED

The Bureau has made some progress in complying with the law, but it did not meet the September 1, 1978, deadline even though the act was passed in November 1975 and allowed about 3 years for preparation and implementation. Special education programs are not yet complete because of poor leadership and a lack of emphasis given the program and because the Bureau did not implement the program at an early date. Also, the Bureau was late in evaluating students, there were not enough special education personnel, and only limited hiring and recruitment efforts were made. Consequently, many handicapped children in the Bureau's schools are not receiving the benefits of special education services. At the time of our review, area office records showed there were about 1,700 handicapped Navajo students and 800 handicapped Phoenix students for a total of 2,500 handicapped students. This number will probably increase because evaluation of students is not complete.

Navajo and Phoenix area office officials were unable to inform us or provide us with records showing the number of handicapped students receiving special education services.

We therefore visited 19 schools in the Navajo and Phoenix area to find out how many of the 883 handicapped students were receiving full, partial, or no special education services. Through examination of school records and discussions with teachers and other school officials, we categorized students as follows:

--If, according to teachers, all the educational requirements of a student's individual education program were being met, that student was categorized as receiving full special education services. We did not evaluate the quality of the services or whether the services were adequate to meet the handicapped needs of the student.

--If, according to teachers, one or more but not all requirements of an individual education program were being met, that student was categorized as receiving partial special education services.

--If, according to teachers, a handicapped student was not enrolled in a special education program, that student was categorized as receiving no services even though the student was attending a regular school class and could have been receiving some type of special education services.

Using these categories, teachers identified 340 students, or 38 percent, as receiving full special education services, 113 students, or 13 percent, as receiving partial services, and 430 students, or 49 percent, as receiving no services.

School	Handicapped students	Receiving full service	Receiving partial service	No special education service
Chinle	50	14	0	36
Cottonwood	24	24	o	0
Many Farms	19	0	0	19
Crownpoint	29	12	8	9
Wingate	63	6	17	40
Greasewood	52	8	26	18
Tohatchi	30	12	4	14
Sanostee	90	14	4	72
Teecnospos	58	38	0	20
Shiprock	36	16	0	20
Tuba City H.S.	48	23	0	25
Tuba City B.S.	98	74	0	24
Leupp	80	40	0	40
Salt River	18	0	0	18
Santa Rosa Ranch	9	3	6	0
San Simon	27	14	10	3
Santa Rosa B.S.	72	22	27	23
Sherman	58	20	0	38
Casa Blanca	22	0	11	11
Total	883	340	113	430

We also noted that in the Navajo area, 23 of about 70 schools with handicapped children did not have any special education teachers and that in the Phoenix area, 3 of the 25 schools with handicapped students did not have any special education teachers.

Leadership and emphasis lacking

The Bureau's initial funding of the Public Law 94-142 special education program began in fiscal year 1978 when the Congress directed about $2 million be set aside from the Bureau's general education funds for this program. An additional $1.9 million was obtained from the Bureau of Education for the Handicapped, Department of Health, Education, and Welfare. In fiscal year 1979, the Congress again directed that $2 million of general education funds be set aside, and also added $5 million to the Bureau of Indian Affairs' appropriation. The Bureau also received $2.4 million from the Bureau of Education for the Handicapped.

The Bureau established an ad hoc division responsible for special education in early 1978. However, this division did not have direct authority over area offices or schools and was staffed with only four persons in temporary positions who had program responsibility. The Bureau officially established the division in March 1979 and increased the staff to eight positions. The central office staff has prepared some policy statements and monitored programs at some schools, a practice we encourage; however, the staff has not yet prepared or developed comprehensive guidelines for implementing and operating the program. Goals for providing full service have been established but are not very realistic. The most recent goal for the 1978-79 school year was to provide special education services to 100 percent of the handicapped Indian children, but the Navajo and Phoenix areas were providing full services to less than 40 percent of their handicapped students during the 1978-79 school year.

According to the act, the Bureau must submit an annual plan to the Bureau of Education for the Handicapped to receive funding. Education officials encourage submission of annual program plans in the January to April time frame preceding the fiscal year for which the plan is approved. This is done so that funds can be provided in time to hire teachers and meet other expenses prior to the school year. However, the Bureau's annual plans were submitted late. The fiscal year 1978 plan was submitted in March 1978, 11 months late; the fiscal year 1979 plan was submitted in June 1979, 14 months late.

The special education staffs at the Navajo and Phoenix area offices have not prepared any comprehensive written guidelines or procedures. An April 1979 monitoring report on the Navajo area stated closer coordination was needed regarding budget development and distribution of funds between the area office, agencies, and schools. It also stated that a procedural plan may be needed to help the schools and agencies in meeting the requirements of the law. The April 1979 monitoring report on the Phoenix area stated more coordination between the area office agencies and schools was needed. The report stated the guidance, monitoring, and follow-through from the area office was inadequate and that an area plan providing areawide policies and procedures had not been developed. This lack of direction affected the distribution of funds and the special education program's day-to-day operations. For example:

--At 13 Navajo schools where we obtained this information, funds initially allocated to handicapped students by the Navajo agency offices for materials, supplies, and equipment were unevenly distributed. Funds for materials and supplies ranged from $18 to $750 per handicapped student; for equipment they ranged from $0 to $292 per handicapped student. (See enc. II.)

--There was an atmosphere of confusion and uncertainty in the program's day-to-day operations. At two of the Navajo agencies we visited, the education staff complained about the lack of leadership, direction, and management of the program. One of these agency education officials stated that no written policies or directions had been received from the area office. In one case, one agency knew of instructions allowing education funds to be used for mobile housing units but another agency did not. The education staff at one agency in the Phoenix area stated that program information was sometimes confusing and conflicting. They said they were told by the Bureau's central office staff to destroy all the evaluations on students who were identified as not being handicapped. However, monitors from the Bureau of Education for the Handicapped later said that they should have retained all the evaluations for auditing purposes.

Students not evaluated on a timely basis

The act requires that in order to qualify for financial assistance an annual plan must be submitted. The plan must, among other things, assure that all children residing within a specific jurisdiction who are handicapped and are in need of special education are identified, located, and evaluated. The plan also must set forth procedures to assure that testing and evaluation materials will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child. The act further states the goal of providing a full educational opportunity to all handicapped children ages 3 through 18 by September 1, 1978.

The nearly 3 years the act allowed before special education services had to be provided was not necessarily a long period of time, particularly for a governmental organization that receives funds through a budget and appropriation process. It was important, therefore, that the Bureau not waste time before identifying, locating, and evaluating Indian children. An accurate determination of the number of special education personnel, their required skills, and their needed locations cannot be made until the handicapped children have been located and evaluated. In spite of the need for immediacy, the evaluations had a slow start in the Phoenix and Navajo areas. Each area office awarded several contracts for student evalutions and started the evaluations in August 1977 in the Phoenix office and January 1978 in the Navajo office. The two area offices have evaluated 7,600 students, which we believe are most of the students needing an evaluation.

Both area offices are presently having problems with their student evaluations. An April 3, 1979, central office monitoring report on the Phoenix area stated that incorrect diagnosis and inappropriate recommendations had been made by the student evaluation contractor. A representative of the Phoenix area office also requested that 29 evaluations be returned to the contractor because inappropriate tests were conducted, the reports were incomplete, the evaluation conclusions were inconsistent with the test results, and the testing for some severely emotionally disturbed children was inadequate. Additionally, a school principal believed 23 evaluations done by one contractor contained gross errors and requested that another contractor reevaluate the students. The central office's monitoring report stated that a clarification is needed for the requirements of a proper psycholigical or psycho-educational assessment for a specific learning disability.

The central office monitoring report on the Navajo area office stated that some students had been misdiagnosed and/or misclassified. Some of the special education teachers and specialists at agency offices and schools also had problems with the quality of many evaluations. The following examples typify their complaints

--The evalutions were written in such a manner as to make them confusing, difficult to interpret, and of little or no use in developing individual education programs for the students.

--The evaluations of Indian students were worthless because of culturally biased evaluation tests. School officials stated localized norms for Indian children would provide for more accurate evaluations. We were told that interpreters were not always used, although some of the students needed them.

--The evaluations were not complete; visual and hearing tests were lacking at one school.

--The evaluations were of poor quality, because health and social background histories for some students were not available or used by the testers.

Hiring efforts of special education personnel have been limited

The Navajo and Phoenix areas do not have sufficient special education personnel to provide services to all identified handicapped students. he needed personnel are special education teachers and other special education professionals, which include speech pathologists, physical therapists, social workers, diagnosticians, and technicians.

The Navajo area office had 67 percent of the special education teachers and 20 percent of the other professionals that have been identified as needed. According to the area office records, it had 39 of the 58 teachers and 5 of the 25 other professionals that were identified as needed. However, 26 of the teachers were not new hires, but were teachers converted from the Elementary and Secondary Education Act's title I program to the special education program. The title I program is directed to the special education needs of educationally deprived children. In contrast, the special education program is directed to the special education needs of handicapped children.

According to information at the Phoenix area office, they had 5 of the 27 teachers, or 19 percent, and 5 of the 32 other professionals, or 16 percent, that were identified as needed. Area office records show that 6 of the 10 special education positions are funded thorugh the title I program and the other four positions are funded under the general education program. All 10 positions are planned for conversion to the special education program.

However, the actual number of special education personnel needed has not been completely determined, and more teachers may be required than Bureau records indicate. Both area offices are still in the process of completing student evaluations, and the number of students identified as handicapped will affect the number of teachers needed. For example, as of June 1979, one Navajo agency was still in the process of establishing positions and requesting approvals for recruiting and hiring. This agency only had three special education teachers during the 1978-79 school year for 329 handicapped students in 14 schools and had recently identified 16 special education vacancies. These 16 vacancies were not included in the area office's statistics of needed personnel. Additionally, in the same agency, the Crownpoint Boarding School had 57 evaluations to be completed. The school principal stated he did not know how many additional teachers would be needed as a result of the evaluations.

When the Congress provided additional funds for the program, it intended that the Bureau hire an estimated 202 special education teachers and specialists. The Navajo area office received authorization to hire no more than 86 new special education personnel on December 8, 1978. However, as of June 1979, efforts to fill these positions had been insufficient. The schools that requested special education teachers did not classify the requests as urgent, and the area's education division did not request that special emphasis be directed toward filling the requests. The area's Chief of the Recruitment and Placement Section said that if priority had been assigned to these positions, a special effort to process applications and visit college students would have been made. He stated applications were sent to 200 or 300 persons on the civil service register, but few of these had been hired. He added that because no recruitment effort was made this spring, it will be difficult to hire the necessary number of teachers by the beginning of the next school year.

The Phoenix area office's hiring efforts consisted of issuing a recruitment bulletin for special education teachers on March 19, 1979, and processing 26 vacancy announcements for special education personnel as of May 31, 1979. However, only one offer of employment had resulted from these efforts. This problem was further compounded by administration and coordination problems in processing personnel positions. For example, area personnel officials stated that no one alerted them that special education positions were being established until January 1979. Also, the classification process for special education positions has been time consuming. An area personnel official stated all of the special education position descriptions had to be rewritten to conform to Public Law 95-561. Other delays resulted because agencies and schools did not determine exactly what positions they needed, and some position requests had to be returned for changes.

Officials at both area offices stated that it is difficult to hire special education personnel because

--special education teachers are in high demand;

--the working and living conditions are poor at many of the isolated schools; and

--the career opportunities are unattractive in that appointments can not be made beyond September 30, 1980, and appointees will not be paid between the spring and fall sessions of schools.

Authority exists to establish special pay schedules or to pay post differentials for isolated areas as a recruiting incentive; however, the Bureau had not taken any specific action in this direction at the time of our review.

FUNDS USED FOR PURPOSES OTHER THAN HIRING TEACHERS

Although the Bureau has made some progress in developing a special education program, the additional funds appropriated by the Congress to hire 202 special education teachers and specialists were being used for other purposes primarily because few such teachers were hired and many other teachers were being paid with funds from title I of the Elementary and Secondary Education Act.

In fiscal year 1978, the Bureau received $3.9 million for the special education program. Two million dollars was set aside from the general education program and $1.9 million was Department of Health, Education and Welfare funds carried over from fiscal year 1977. A Bureau official stated most of these funds were used to evaluate Indian children. In fiscal year 1979, the Bureau's special education funds increased to $9.4 million. The Congress provided an additional $5 million and directed the Bureau to set aside $2 million from the regular education program for a total of $7 million. The Congress intended that the additional funds would make it possible for the Bureau to complete assessments and to hire an estimated 202 special education teachers and specialists. The remaining $2.4 million was obtained from the Department of Health, Education, and Welfare. As of May 31, 1979, the Bureau had obligated $3.1 million, or 33 percent, of these fiscal year 1979 funds.

In fiscal year 1979, the Navajo and Phoenix area offices received special education allotments totaling more than $5 million. The Navajo's allotment was $3,674,347, and Phoenix's allowment was $1,417,298. However, as of May 31, 1979, only about 16 percent of these funds had been obligated. The Navajo area had obligated $517,000; the Phoenix area had obligated $226,000. A sizeable portion of the allotments were programed for special education salaries; however, since many of the special education personnel had not been hired, and many of the present teachers were funded through title I, few of these funds were spent. For the Navajo schools we visited, only about 20 percent of the special education funds programed for salaries had been spent or obligated as of May 31, 1979.

In passing the education act for the handicapped, the Congress clearly intended that special education funds be used to help handicapped children overcome their handicaps and enjoy a full education. The act specificially allows the expenditure of funds for many services including recreation services. The expenditure of these funds are limited, however, to only the excess costs of special education and related services for handicapped children. In providing additional funds for the Bureau, the Congress was more specific; the House Committee on Appropriations report accompanying the Department of the Interior and Related Agencies Appropriation Bill, 1979, (Public Law 95-465) states:

"Education.--The additional $6,013,000 recommended for school operations will provide $5,000,000 to meet the needs of handicapped children as required by Public Law 94-142 and $1,013,000 for the operation of the Labre Indian School. The Labre School will provide educational services to 366 day students in preschool through 12th grade and 65 boarding students for a total enrollment of 431.

The increase for handicapped children will make it possible for the first time to serve a significant number of handicapped children. The funds will be used to complete the assessment of each child and to hire an estimated 202 special education teachers and specialists."

We noted that Navajo area school and agency officials were planning to use some of the additional appropriated funds for such things as athletic equipment and office and dormitory furniture. While these types of purchases may be allowed under the Education for All Handicapped Children Act of 1975, they were made while the specific congressional requirement to hire 202 special education teachers and specialists was generally ignored.

The following are examples of planned expenditures:

--The Tuba City Boarding School prepared requisitions for several items, such as athletic equipment, entertainment, and dormitory furniture, for a total of more than $11,000. We discussed the appropriateness of these requisitions with agency and school officials and were told the requisitions were subsequently charged to general education funds.

--Wingate Boarding School requisitioned $823 of athletic equipment, including basketballs, baseballs, footballs, softballs, softball gloves, and volleyballs. The school also requisitioned 12,000 paper cups and 96 bottles of skin lotion costing $216.

--The Shiprock agency office requisitioned 140 optical examinations and glasses at a cost of $9,800. We were told these examinations and glasses are for students not formally assessed as handicapped. The agency also requistiioned $3,200 of office equipment and $1,700 of photographic and recording equipment.

--The Shiprock Boarding School requisitioned about $2,000 of carpeting, rugs, drapery tape, and pajamas for trainable mentally handicapped students.

Navajo area office education officials informed us that any expenditure made to fulfill the requirements of its 1979-1980 school year special education program is appropriate. This program allows such things as dormitories, personal hygiene supplies, and physical education equipment. Accordingly, the Navajo area education office operates under the premise that many different types of materials and equipment are necessary to service handicapped student needs, and that special education funds may properly be spent on items, such as electric typewriters, desks, trampolines, lawn mowers, rototillers, athletic equipment, cameras, movie projectors, and calculators. Further, a Navajo education official stated that every special education classroom needs its own complement of supplies and equipment which cannot be shared with other special education or general education classes.

Agency officials in the Navajo area stated that not all schools have adequate classroom facilities and teacher housing, and three of these four agencies have programed special education funds for portable classrooms and housing. For example:

--The Western Navajo Agency has requisitioned two temporary classrooms at a cost of $48,000.

--The Eastern Navajo Agency has requested $97,000 of special education funds to purchase and install about four portable teacher housing units and two portable classrooms.

--The Shiprock Agency official stated that they need four mobile homes at two schools for teacher housing.

--The Fort Defiance Agency has programed about $177,000 for two portable classrooms and 10 portable housing units.

Three of the schools we visited in the Phoenix area also stated there were inadequate classroom facilities. However, none of these schools had programmed special education funds for classroom units, instead they are trying to improve facilities with other funding.

CONCLUSION

The Bureau's slow progress in achieving the mandate of the Education for All Handicapped Children Act of 1975, is a result of poor leadership and a lack of emphasis placed on the program. The other problems, such as the late start on the student assessments, the limited efforts to hire special education personnel, and the expenditure of funds for purposes other than hiring teachers are all a direct result of the lack of leadership and emphasis. This situation should show some improvement as the newly created division responsible for special education assumes the management of the program.

RECOMMENDATION TO THE APPROPRIATIONS COMMITTEES

We recommends that the Senate and House Committees on Appropriations restrict the Bureau's fiscal year 1980 special education funds to hiring special education teachers and specialists. The committees should not allow the Bureau to use these funds for other purposes without congressional approval.

RECOMMENDATIONS TO THE SECRETARY OF THE INTERIOR

We recommend that the Secretary of the Interior direct the Assistant Secretary for Indian Affairs to:

--Determine the special education personnel needed, by location, and develop a plan to hire those personnel at the earliest possible date.

--Develop policies, guidelines, and realistic goals to meet the mandate of the Education for All Handicapped Children Act of 1975, for the delivery of special education services to all handicapped children in Bureau-operated schools.

ENCLOSURE II

NAVAJO AREA

DISTRIBUTION OF FUNDS

PER HANDICAPPED STUDENT

School	Amount for material & supplies	Per handicapped student	Amount for equipment	Per handicapped student
Chinle Agency				
Chinle	$16,000	$100	$ 5,000	$ 320
Many Farms	10,000	0	0	526
Cottonwood	10,000	208	5,000	417
Eastern Agency				
Crownpoint	526	0	0	18
Wingate	8,738	82	5,169	139
Fort Defiance Agency				
Greasewood	37,100	71	3,700	713
Tohatchi	20,200	47	1,400	673
Shiprock Agency				
Sanostee	5,000	0	0	56
Teehospos	5,000	0	0	86
Shiprock, Dorm #1	26,994	0	0	750
Western Agency				
Tuba City (H.S.)	30,468	292	14,000	635
Tuba City (B.S.)	11,323	31	3,000	116
Leupp	3,044	24	1,956	38

APPENDIX E

U.S. DEPARTMENT OF THE INTERIOR

RESPONSE TO THE U.S. GENERAL ACCOUNTING OFFICE REPORT

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RESPONSE TO GENERAL ACCOUNTING OFFICE REPORT

BY THE DEPARTMENT OF INTERIOR *

* Addendum

Readers of the first Annual Report of the Bureau of Indian Affairs Advisory Committee for Exceptional children who wish to read the entire response to the General Accounting Office report may contact the Bureau of Indian Affairs, Division of Exceptional Education, Mail Code 507, 18th and C Sts., N. W., Washington, D. C. 20245.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

The Honorable Abraham Ribicoff
Chairman
Governmental Affairs Committee
Room 337
Russell Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

By letters dated September 4, 1979, the Comptroller General transmitted concurrently to the Subcommittee on the Department of the Interior and Related Agencies of the Senate Committee on Appropriations and to this Department a report prepared by staff of the General Accounting Office entitled "The Bureau of Indian Affairs is Slow in Providing Special Education Services to All Handicapped Indian Children" (CED-79-121). The letter to Chairman Byrd summarizes the principal conclusions reached by the report and includes specific recommendations to both the appropriations committees and to the Department of the Interior.

Attached to this letter is a statement by the Department of the Interior in response to the recommendations contained in the Comptroller General's September 4 letter pursuant to the timeframes established by Section 236 of the Legislative Reorganization Act of 1970.

The development of an effective program of special education services for handicapped Indian children has been for several years a matter of highest priority for the Department of the Interior and the Bureau of Indian Affairs. In our judgment the report as presently drafted, while raising certain important matters of on-going concern, falls far short of a fair, impartial and informed assessment of past and present efforts by staff of this Department to create from inception a comprehensive,

complex and sophisticated special education service delivery system in rural and remote areas where such services have never existed in the past, among a child population for whom most available identification and assessment instruments are totally inappropriate, and in an administrative and legal environment dramatically altered during the first year of program implementation by passage of P.L. 95-561. The report also fails to include an assessment of important management actions which occurred prior to September 4 but after the conclusion of the ninety-day review. Accordingly, I am also enclosing a detailed response to the September 4 report addressed to the accuracy, completeness and fairness of the report and those actions which had already been taken by the Office of Indian Education Programs prior to the completion of the report which were not included therein.

Sincerely,

UNDER SECRETARY

Enclosures

STATEMENT IN RESPONSE TO THE SEPTEMBER 4, 1979 GAO REPORT: "THE BUREAU OF INDIAN AFFAIRS IS SLOW IN PROVIDING SPECIAL EDUCATION SERVICES TO ALL HANDICAPPED INDIAN CHILDREN"

General Response

The development of an effective program of special education services for handicapped Indian children has been for several years a matter of highest priority for the Department of the Interior and for the Bureau of Indian Affairs.

As the report, itself, indicates many of the administrative problems pointed out by the General Accounting Office (GAO) Report, "The Bureau of Indian Affairs is Slow in Providing Special Education Services to All Handicapped Indian Children" were, in fact, identified and subsequently corrected through the field monitoring procedures followed by the Office of Indian Education Programs. Furthermore, in light of the fact that the Bureau of Indian Affairs (unlike the fifty state educational agencies covered by P.L. 94-142) initiated its special education following the August, 1977 publication of regulations under Part B of the Education of the Handicapped Act, the Bureau believes that far from being "slow in providing special education services" to handicapped Indian children it has moved quickly to build a special education program that meets Federal requirements during the first two years.

1. GAO RECOMMENDATION TO THE APPROPRIATIONS COMMITTEES

"We recommend that the Senate and House Committees on Appropriations restrict the Bureau's fiscal year 1980 special education funds to hiring special education teachers and specialists. The committees should not allow the Bureau to use these funds for other purposes without congressional approval."

Response: The Department strongly disagrees with this recommendation. Such a limitation on the ability of the Department to manage its basic funding for the special education program would severely hamper the

ability of the Department to implement fully the requirements of P.L. 95-561. Additionally, because other special education funds available to the Department under P.L. 94-142 can only be used for services not generally provided to non-handicapped students (e.g., instructional materials; evaluation instruments), the Department of the Interior would be placed in the legally untenable position of either violating the comparability requirement (45 CFR 121a.231) of the HEW Regulation or failing to provide essential aspects of a free appropriate public education to handicapped Indian children enrolled in BIA schools.

The end result of the recommended action would be to prevent blind students from receiving braille texts, deaf students from being provided with amplification systems and orthopedically handicapped children from access to adaptive physical education equipment.

The Department has and will continue to place a very high priority on the use of the additionally appropriated special education funds for the hiring of special education teachers and support personnel and the Director, OIEP has initiated a detailed audit of Navajo Area fund utilization to ensure full compliance with all applicable provisions. No constructive purpose would be served by the recommended limitation on the Department's authority to manage the special education funds and its potential effect would only be harmful to the interests of the children to be served.

2. GAO RECOMMENDATION TO THE SECRETARY OF THE INTERIOR

"We recommend that the Secretary of the Interior direct the Assistant Secretary for Indian Affairs to determine the special education personnel needed, by location, and develop and plan to hire those personnel at the earliest possible date."

Response: Information concerning all needed special education personnel is being provided to OIEP in each school/agency application submitted for P.L. 94-142 funding approval consistent with the current Annual Program Plan.

A plan to hire all needed personnel is currently under development by OIEP and will be completed by December 1, 1979 and submitted to HEW with FY1980 Annual Program Plan. Development of the plan is awaiting issuance on November 1, 1979 of the general personnel standards being developed by the BIA pursuant to P.L. 95-561.

3. GAO RECOMMENDATION TO THE SECRETARY OF THE INTERIOR

"We recommend that the Secretary of the Interior direct the Assistant Secretary for Indian Affairs to develop policies, guidelines, and realistic goals to meet the mandate of the Education for All Handicapped Children Act of 1975, for the delivery of special education services to all handicapped children in Bureau-operated schools."

Response: The goals for full compliance of the BIA special education program will conform with all requirements of P.L. 94-142 as established by statute. Whether realistic or not, those goals must be adopted by this Department in order to comply with applicable law. A similar set of goals are imposed on the Department by the HEW Regulation implementing Section 504 of the Rehabilitation Act of 1973 (45 CFR 84).

Attached at Tab A are draft comprehensive regulations recently developed by the Department to fully implement the requirements of both the HEW P.L. 94-142 and Section 504 Regulations. The regulations will be published for comment later this month and when finally adopted later this year will represent the most comprehensive policies and guidelines governing special education in the United States.

APPENDIX F

REPORT OF THE
CONSORTIUM FOR HANDICAPPED INDIAN CHILDREN

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THE CONSORTIUM FOR HANDICAPPED INDIAN CHILDREN:

A REPORT

Prepared by:
The National Association of State Boards of Education
and
Indian Education Training, Inc.

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This report is dedicated to
DAN RINGLEHEIM,
who tirelessly and selflessly advocated
for the
protection of the rights of American Indian and
Alaskan Native handicapped children

This work was performed under contract with the U.S. Office of Education, Department of Health, Education and Welfare. Points of view or opinions stated do not necessarily represent the official Office of Education position or policy.

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EXECUTIVE SUMMARY

The difficulties presently encountered in providing a "free, appropriate public education" to handicappd Indian children (as mandated by P.L. 94-142) have roots in the history of Indian education, and particularly in the jurisdictional ambiguity that results from the Indians' unique status as a "nation within a nation."

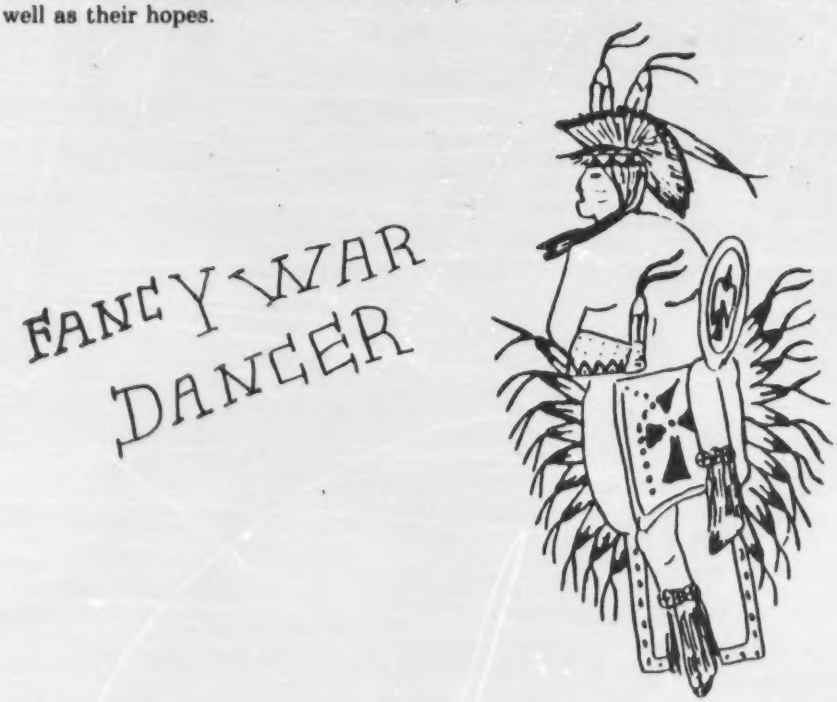
Unlike other minority groups, American Indians have a trust relationship with the federal government (as defined by treaty) and are therefore eligible to receive services from the federal government as well as from their home state. One result of this jurisdictional overlap is that there are frequent gaps in the delivery of services to Indians, just as there are frequent duplications.

Recognizing the need for a new approach to this situation the Bureau of Education for the Handicapped contracted with the National Association of State Boards of Education and Indian Education Training, Inc., to conduct a series of national and regional conferences which would (a) identify problem areas (b) make recommendations and (c) establish linkages and create communication networks among the major providers of educational services to handicapped Indian children.

A national conference was held in Washington, D.C. in November, 1977, bringing together knowledgable representatives from Indian tribes and a number of federal and state agencies. These experts discussed the problems confronting the provision of a free, appropriate public education to handicapped Indian children, and identified five broad areas of concern: (a) child-find (b) due process (c) evaluation and testing (d) training and program development (e) support services.

These issues were examined in detail by state and federal agency personnel, representatives of Indian tribes, and advocates at the regional conferences held later in the year. This report contains a summary of their findings, and a series of recommendations based on what they learned.

It should be noted, however, that because of the sensitive nature of the subject matter, and because many of those attending the conferences felt that the need for services far exceeded the present capabilities of the service delivery systems to meet those needs, there was an emotional tone to the meetings which cannot be ignored. This report necessarily reflects some of the frustrations of those involved, as well as their hopes.



THE EDUCATION OF AMERICAN INDIANS: AN HISTORICAL PERSPECTIVE

As Europeans settled America, education became the primary method used to "civilize" the Indian. In 1784 the U.S. government signed the first treaty that promised educational services to the various tribes. Over the next seventy years many other treaties followed which contained vague and ill-defined promises to educate Indian children, but these provisions were rarely implemented by the federal government. Such education as existed was usually carried out by missionaries who looked to the federal government for funding.

In 1824, the Bureau of Indian Affairs (BIA) was created as part of the War Department to supervise and regulate Indian affairs. Seven years later Chief Justice Marshall ruled that the Indians" relation to the United States resembles that of a ward to his guardian."

That same attitude was evident in 1872 in a statement issued by Francis C. Walker, the Commissioner of BIA:

> No one will rejoice more heartily than the present Commissioner when the Indians of this country cease to be in a position to dictate, in any form or degree, to the government, when in fact, the last hostile tribe becomes reduced to the condition of suppliants for charity. (Nations Within A Nation, p. 22.)

Government schools were created in the early 1870's with the purpose of teaching a trade to the Indians and breaking up tribal life. Though the BIA was transferred to the Department of the Interior in 1849, old army buildings were used as schools and army officers took on the duties of educators.

In 1887 the Compulsory Indian Education Act was passed in another effort to assimilate the Indian into the white man's culture. The government established boarding schools where Indian children could be indoctrinated into the Anglo-American culture. They were separated from their parents and tribes, and were forbidden to speak their native language. Miliary discipline prevailed, even within boarding schools run by missionaries.

In 1890 the Supreme Court ruled against the expenditure of federal funds for missionary schools. This left the education of Indians primarily in the hands of the U.S. government, with boarding schools serving as the dominant mode of education until the 1930's.

Federal responsibility for the education of Indian children was further increased by the Indian Citizenship Act of 1924. It gave more recognition to the Indians, and subsequent treaties and legislation included educational provisions. However, the federal government continued to pass on this responsibility to religious orders, which were under contracts to provide school services. It is noteworthy that at this time 95% of all Indians who attended these schools returned to the reservations after completing their education, the drive to Europeanize the Indian through schooling had failed completely.

1928 signalled the end of federal control of Indian education with the publication of the Meriam report -- the result of a study of federal administration of the Indians by the Brookings Institute, and named for the director of the project, Lewis M. Meriam. The report exposed the outmoded teaching methods, primitive housing facilities for the students, and staff cruelties toward the Indian child.

The federal government had for some time been looking to the states to take on the responsibility of educating the Indians, just as they were responsible for non-Indians. John Collier, the Commissioner of BIA at that time, believed that Indians would be better served by public schools, for he considered integration to be essential if Indians were ever to enter the mainstream of American life.

His policy was put into effect through the Johnson-O'Malley Act of 1934, a statute which authorized the federal government to contract with the states for the purposes of proividing education, medical attention, agricultural assistance and social services for Indians. Prior to this act, BIA contracted with individual school districts for the purpose of enrolling federally-connected Indian students.

In 1939, five years after the passage of Johnson-O'Malley, only four states had chosen to participate in this contracted arrangment; by 1957 that number had risen to 24, and since 1960, more than 70% of all Indian children have been attending public schools.

During the 1950's and 1960's a number of federal programs were enacted which presumably increased the chances for an Indian child to have an adequate education. In 1953 the Federal Impact Aid Laws (P.L.8-874 and P.L.81-815) were amended to provide financial aid to public school districts located near non taxable Indian lands. The Elementary and Second Education Act (P.L.89-10) followed in 1965. Title I provides federal aid to educationally deprived children in economically depressed areas. The Adult Education Act (P.L.89-750) was passed the following year with a provision for grants to the states to be used in the development of education programs for Indian adults.

Although it was certainly unintended, one of the results of this rash of programs was to blur the lines of responsibility for educating Indians between the federal government and the states. This confusion grew as more laws were passed which were designed to help the states help the Indians, and remains one of the main problems in administering Indian education programs today.

In the 1970's a number of new federal initiatives added to this jurisdictional ambiguity. The passage of the Indian Education Act of 1972 (P.L.92-318) created the Office of Indian Education within the U.S. Office of Education. The purpose of the law was to provide financial assistance to education requiring their participation in decision-making, and to provide financial assistance to education agencies involved in programs for Indians. Title VIII of the Native American Programs Act of 1974 (P.L.93-644) authorized the Secretary of HEW to provide funds to community-sponsored Headstart programs for Indians.

In 1975, federal policies for Indians expanded into another previously neglected area. In addition to providing funding to the states, the government legislated greater involvement of Indians in the development and implementation of educational programs. The Indian Self-Determination and Educational Assistance Act (P.L.92-318) calls for the funding of educational facilities which shall be used in ways that the Indians themselves determine. This signalled another move away from direct federal jurisdiction of Native Americans, and resulted in some improvements. But it has also exacerbated the uncoordinated series of educational policies that involve several agencies of federal, state and local governments, and greatly affects the way American Indians are educated today.

THE EDUCATION OF AMERICAN INDIANS TODAY

Perhaps the main problem encountered in the present-day system of Indian education is the absence of any clear distinction between the responsibilities of the federal government and those of the states.

Some state departments of education have taken the position that their responsibility for Indian students is identical to that for non-Indian students. It can only be taken away when a particular child is enrolled in a BIA school.

In other states, the issue is not so clear. Here, the responsibility is assumed to be a federal one unless a particular child is enrolled in a public school. This has created problems, because until 1977, it was BIA policy that Indian students could attend BIA schools only when public school programs are unavailable. (Code of Federal Regulations, Title 25-E part 31.1a.). In 1977 that policy was changed so that any student eligible for BIA services could attend a BIA school on request.

In some states the BIA and public school system jointly operate what are known as cooperative schools. These schools have shared jurisdiction over pupils located within the same school building, but they frequently have difficulty defining federal and state program responsibility.

Since BIA is a federal agency with no state education jurisdiction, it has individual BIA schools but no local education agencies. There is no line authority from the BIA director to education staff in the field. Local agency superintendents have no authority to take emergency action and must go through a complex appeals process to implement local policies.

The net result of these jurisdictional overlaps and ambiguities is an educational system which frequently falls short of providing even the average Indian child with an appropriate education. And the problem is only compounded when it comes to educating the Indian child who is also handicapped.

THE EDUCATION OF HANDICAPPED INDIAN CHILDREN

In 1975, the Education for All Handicapped Children Act (P.L.94-142) was signed into law. It guarantees the right of all American children to a "free, appropriate public education" by requiring the states to provide educational services to all handicapped children and allocated funds for that purpose.

The Senate report (94-168) which accompanied its version of the bill specifically addressed the needs of American Indians:

> It is the intent of the Committee that all requirements applied to state and local education agencies respecting eligiblity and application shall apply to the Department of the Interior and that all benefits and protections provided for handicapped children served by state and local agencies shall also be provided to handicapped children served by the Department of the Interior.

This special emphasis on educating the Indian handicapped within the BIA school system was clearly needed. A study made by the General Accounting Office entitled "Concerted Effort Needed to Improve Indian Education," stated that "BIA was not operating its own program for providing special education for handicapped Indian children, even though studies indicate that Indian children suffer from a higher-than-average incidence of hearing loss, vision difficulties, and other handicaps." (He Will Lift Up His Head, p.30).

Critics of the Bureau of Indian Affairs -- particulary the Indians themselves -- were simply trying to assure themselves that the intent of Congress would not become swallowed up in the BIA's internal problems. As the Special Assistant to the American Indian Policy Review Commission observed. "The Bureau of Indian Affairs has become a massive bureaucracy operating from a complex and contradictory manual that has not been updated in nearly ten years. It has no adequate system for reporting to Congress or Indian tribes how monies are being spent or whether they are fufilling tribal needs and the intent of Congress." (Nations Within a Nation, p.23).

These words were written in 1975 -- the year P.L. 94-142 was passed, and the year that the U.S. Office of Education reported that " out of an estimated 19,500 handicapped children attending BIA schools only 4500, or 23%, were receiving services." (He Will Lift Up His Head, p. 29.)

THE NATIONAL AND REGIONAL CONFERENCES

In the spring of 1977, the Bureau of Education for the Handicapped assumed a leadership role in addressing the problem. Realizing that an information shortage existed and a coherent strategy for providing appropriate services to Indian handicapped children was lacking, officials at the BEH decided to sponsor a series of meetings which would bring together knowledgable persons in the field to discuss the issues and make recommendations.

Planning for the conferences began in the fall of 1977. The Bureau of Education for the Handicapped decided that the National Association of State of Boards of Education, and Indian Education Training, Inc., would jointly plan and run the workshops and the presentations of the conferences

All three organizations perceived a need to untangle three central questions:

- What are the implications of P.L. 94-142 for Indian students?
- If Indian students are eligible for services through both the BIA and their own state, who will be responsible for which services?
- Can new lines of communication be opened between Indians and state education organizations, and between state and federal agencies as well?

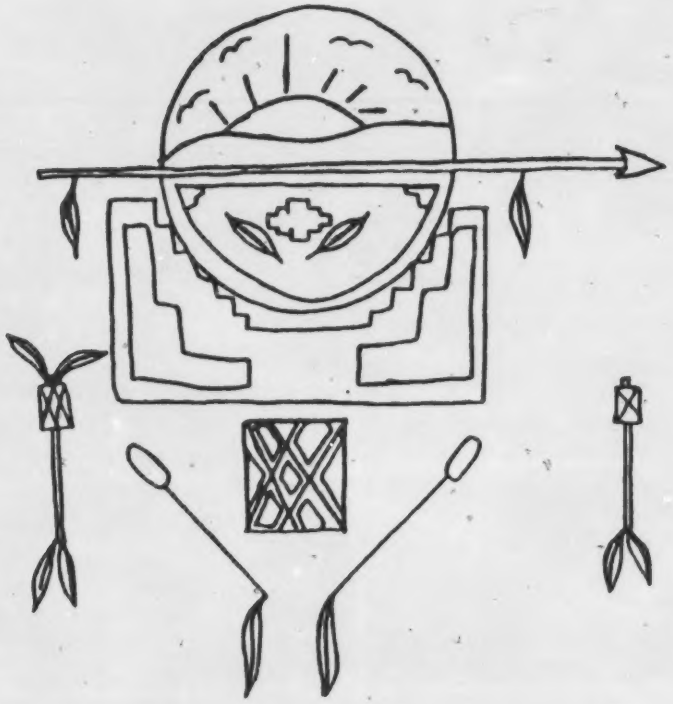
If was decided that these questions could best be answered by bringing together representatives of all those groups and agencies involved, and a national conference was scheduled to be held in Washington, D.C., in November, 1977. It brought together some fifty people who were recognized national leaders in Indian education. Their task was to define the issues and to establish workable formats for the workshops and training sessions that would be featured at subsequent regional conferences.

Five broad areas of concern were outlined at the Washington conference -- child find, due process, evaluation and testing, program development and training, and support services.

These issues provided the focus for the efforts of those attending a series of regional conferences held later in the year. San Francisco, Denver, New Orleans, Seattle, Minneapolis, and Albuquerque were selected as sites because of their proximity to large Indian populations.

As in the national conference, representatives from a broad spectrum of interests and disciplines were encouraged to attend. Participants included members from a number of Indian tribes: state education agencies: local education agencies: state legislators: state Boards of Education: Indian controlled schools: BIA contract schools: Congressional staff members: the Office of Indian Education: the Bureau of Education for the Handicapped: Indian Health Service: Head Start: advocate groups.

What follows is a narrative digest of the many discussions that took place.



CHILD FIND

Jurisdictional Overlap

Perhaps the most perplexing single problem in identifying handicapped Indian children is one of jurisdiction. At both the national and regional conferences participants cited the lack of any clear arrangements between the BIA and the various states as to who, exactly, is responsible for locating those children who will need special education programs during their school years.

This jurisdictional ambiguity is especially acute for youngsters living on or near reservations. In many cases no one knows whether a child will be enrolled in the public or federal system until the first day of school. Indians living within areas administered by the BIA theoretically have the choice of attending either the public or BIA school, but this is a choice in theory only. If even half those eligible opted for the BIA schools, the existing facilities and staff could not begin to accommodate them.

Parents who have assumed that their child would be attending the nearby BIA school frequently learn at the last minute that there isn't enough space. This type of situation occurs with such depressing regularity because the responsibility for making an accurate count of pre-school children has never been clearly defined. In some parts of the country both the BIA and the local school district make the count, and their figures are often at odds. In other areas each assumes the other is doing the job and it ends up not being done at all.

Fortunately, a trend is beginning to develop in some states toward a delineation of responsibility between the BIA and local school districts. In some instances the arrangements for locating children are collaborative. In others, the responsibility is assigned to one of the agencies with the provision that the other can use the information once it has been collected. Although these arrangements are by no means perfect, they are nonetheless an improvement over an administrative vacuum in which each agency assumes the other must be doing the job.

Sharing Information

An already unwieldly situation becomes even more complicated in trying to identify and provide services for handicapped Indian children. To state and BIA educational systems are added their respective social services and health branches — at least in theory. Project Headstart and the Indian Health Service may enter the picture -- or they may not. Conference participants painted a picture of a multiplying number of agencies becoming involved, each without a clear idea of its own responsibilities.

Moreover, instead of increasing the amount of information transmitted, such multiple agency involvement tended to have the opposite effect. Conferences cited many examples of breakdowns and blockages in communication. They noted that in some extreme cases as many as eight different aencies will collect information, then fail to share it with each other. It is not uncommon for one agency to gather information which has been collected and coded by another the previous year.

Some agencies use U.S. census figures. Others use their own or those gathered by the BIA. Rarely do these figures agree. And even in states which have sophisticated computer systems to assist in locating handicapped children, the BIA is frequently left to its own resources simply because the necessary arrangements to use the computers have never been worked out.

Another problem area is associated with the Indian Health Service (IHS). Although it is supposed to maintain records of persons with birth defects and other potentially handicapping conditions -- thus becoming a prime source of valuable information — IHS lacks the personnel to keep records up to date. The records that do exist are seldom kept in a central office; this is largely the result of an IHS Practice of contracting with civilian doctors in places where their own doctors are in short supply -- as they are practically everywhere. To combat this situation, many conferees urged that paraprofessional staff be used to maintain existing records, as well as to actively seek out any pertinent information other agencies may have at their disposal.

Within the BIA itself there is a problem in communications. BIA social services and BIA education might share the same agency building, but they are on different administrative tracks. The amount of information passing from one branch to the other is spotty at best, and when it does happen it usually passes from one staff member to another -- the result of individual concern, not BIA policy. And, not surprisingly, the responsibilities of each department toward the handicapped child are seldom clearly defined.

There are other impediments to the sharing of information. Until January 1978, for example, IHS, worried about the privacy requirements of the Buckley Act, was reluctant to share its data with BIA education. A memorandum of agreement between IHS and BIA to permit this exchange has been worked out, but there is no similar agreement between IHS and Headstart programs. Most conference participants felt that this was especially unfortunate, since Headstart could play a crucial role in identifying handicapped children before they enter school, and many conferees mentioned a fear of violating the Buckley Amendment on the privacy issue as a principal reason for the excessive caution demonstrated by all agencies when it comes to sharing their data.

Tribal Involvement

One of the recurring themes at the regional conferences was the importance of demonstrating to Indian parents that special education programs can indeed benefit children with special problems. However, this must be done in the face of a certain amount of skepticism on the part of many Indian parents, many of whom resist the idea of special education because of its unfortunate association with past abuses.

A number of tribal representatives at the regional conferences reported that, until fairly recently, Indian children identified as handicapped were often sent away to residential institutions which were too far away to allow parental visits. Although this is an infrequent occurrence today, it was noted that many Indian parents still believe that if they tell anyone they have a handicapped child, they will (in effect) lose that child altogether.

It is also true that in many Indian communities certain potentially disabling diseases -- such as otitis media (which can cause deafness) and trachoma have become so commonplace that people no longer view them as handicapping conditions. There is also the tendency to regard emotionally disturbed children as youngsters who are simply discipline problems and who don't really need special education. Add to this the fact that many Indian youngsters have been inappropriately placed in special classes because of difficulties with English, and you have the basis for a considerable amount of Indian resistance to special education. This substantially reduces the role that Indian parents and tribal members might play in identifying children with potentially disabling conditions. However, most conferees agreed that any visible evidence of success in the field of special education would help to compensate for past abuses, and help to convince parents that there are positive reasons for notifying schools or IHS of their children's handicaps.

There was also general agreement that parents and concerned tribal members must be encouraged to participate at a much broader and deeper level than is presently the case. Tribal organizations — particularly health and education groups – should be involved at the advocacy level. Such participation should be geared toward increasing awareness among Indians about the nature of handicapping conditions, and alerting them to the steps that can be taken to meet the needs of the disabled.

A number of conferees also noted that it is not uncommon for tribal members to know a great deal about laws which primarily affect Indians, yet know very little about laws such as P.L. 94-142 which affect the general public as well. Hope was expressed that once parents and key tribal members understand the ramifications of P.L. 94-12, advocacy groups could be formed which might join forces with their counterparts in non-Indian communities, thereby forging a bond which would be helpful to both.

Other Problems

Conference participants also raised a number of other issues in the child-find process.

- There is a shortage of trained personnel and a lack of good materials to train these personnel to recognize and evaluate handicapping conditions.

- There are a number of Indian migrant children who might be eligible for special education if they move so often makes it difficult to maintain centralized records and further complicates the determination of who is responsible for providing the necessary services.

- The process of identifying handicapped children in isolated areas is difficult and expensive. Responsible agencies must face that fact and make the necessary adjustments to make sure this occurs.

- Regular classroom teachers and teacher's aides need more training to help them identify children with potentially disabled conditions. Children who are not diagnosed as needing special attention at an early age often go through school without getting the special education they are entitled to. The situation is exacerbated in many cases by teachers who have little or no experience in dealing with Indian cultures.

- In many areas children who have already been identified as needing special education are still waiting to enroll in programs which could help them. This seriously reduces the incentive to locate more.

DUE PROCESS

"The State shall assure that . . . procedures are established for consultation with individuals involved in or concerned with the education of handicapped children, including handicapped individuals and parents or guardians of handicapped children, and that there are public hearings, adequate notice of such hearings, and an opportunity for comment available to the general public prior to the adoption of the policies, programs, and procedures required pursuant to the provisions of this section."

—Section 612(7) of P.L. 94-142

Understanding Due Process

The due process requirements of P.L. 94-142 provides for a system of appeals and hearings that presumably maximizes the chance of a fair decision when the rights of the various groups come into conflict. However, this system can only work when both students, parents, and the schools understand their rights under the safeguards provided by P.L. 94-142.

Conferees reported that most Indian parents have little understanding of their rights under the present educational system. They do not expect professional educators to consult them regarding the most appropriate education for their children, and rarely volunteer any opinions on the matter

Although BIA schools usually have advisory boards composed of Indian parents, these advisory boards wield little power in the overall system; and in boarding schools, the distance between school and home usually precludes parents from taking an active role.

The same situation is true in the public school system. Conferees reported that most Indian parents feel uncomfortable dealing with the "white man's school" and are hesitant about participating, even when such participation would be welcome. Although some Indian parents have been active in federal Indian programs within individual schools, this involvement has not extended to an assertion of rights within the larger education system.

Because of this history of minimal parental involvement, conference participants felt that a significantly greater attempt must be made to inform the Indian community of their legal rights. At the present time the usual procedure is to post a list of rights, without explanation — on a community bulletin board, where they usually go unseen or uncomprehended by those who might be affected. Conferees urged that both the rights themselves and the reasons behind them be explained in detail at local community meetings.

It is clear that the due process sections of P.L. 94-142 will not work the way they were intended unless parents understand them. In some cases this may mean translating the material into an Indian language. More often it only means translating the legalese into comprehensible English. It was further urged that these explanations extend to school staff members, including classroom teachers, many of whom are unfamiliar with the meaning or intent of due process.

Surrogate Parents

Another frequently encountered problem is that of surrogate parents. Many Indian children live with adults with whom they share an extended family relationship — uncles, aunts, cousins, grandparents, etc. Sometimes they live with adults who are not relatives at all, in relationships defined by tribal custom, and recognized as "legal" by tribal members — though not necessarily by the states.

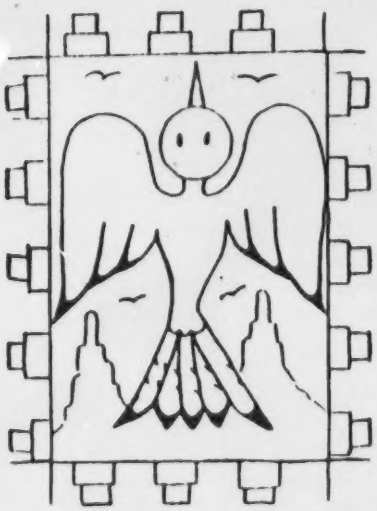
Conferees warned that until the issue of what constitutes a "legal" relationship is resolved, surrogate parents will continue to be reluctant to exercise their rights under due process since it may mean getting involved in complicated, and perhaps costly, legal issues. Conferees emphasized that surrogate parents need to know what their rights are, while schools need to understand the importance of these traditional tribal relationships.

Hearing Officers

In most places there is a serious shortage of Indian hearing officers, and in more remote areas an absence of any trained officer at all. The various tribes and inter-tribal organizations have not generally been involved in the selection of candidates for hearing officers rosters. There is therefore a very real fear among Indians that their appeals will be heard by someone with little or no understanding of their culture or the problems they encounter in dealing with the white man's world. Objectivity does not exist in a vacuum; it requires information and understanding. Most conferees believed that Indian confidence in the protection offered by due process would substantially increase if at least some members of the hearing panel understood what it meant to be an Indian child.

Boarding Schools

The boarding schools operated by BIA present a number of logistical problems in addition to those found in public and BIA day schools. By definition, parents of these children are not readily available to discuss issues or present testimony. Many live in remote rural areas where there is neither a telephone or mail delivery. The due process procedures are almost impossible to carry out over the course of a semester when parents who do not read or write pick up their mail once a week at a trading post. None of the conference participants provided an answer to this dilemma, but there was general agreement that BIA needs to develop a system for providing educational services to handicapped Indian children who attend the boarding schools.



EVALUATION AND TESTING

Parent Involvement

In the area of evaluation and testing there is again the need to compensate for the unfortunate history of Indian education . In the past, according to conferees, many classes labeled "special education" were in fact simply slow tracks. Children were placed in such classes because they scored poorly on tests conceived by a different culture and written in a language that wasn't always entirely familiar.

There is a resulting resistance among Indian parents to participate actively in the evaluation and testing process. They will sometimes withhold permission to test their children because they are certain it is simply an act of discrimination.

When permission is granted it often comes from a feeling of powerlessness, rather than from any belief that it will be helpful to the child. Conference participants urged that greater emphasis be placed on the fact that parental involvement is an essential step in correctly diagnosing a child's abilities, and not merely a token exercise in participatory democracy.

Tribal Involvement

One helpful step toward a more open dialogue between schools and parents could be an increased involvement of tribal education groups. If they were convinced of the benefits of evaluation they could encourage parents toward greater participation. Community health representatives and community workers could also be involved.

All of this would require training – of parents, tribal leaders, community health workers. A workable system of referrals could then be worked out between these groups and the schools. However, most conferees seem to feel that increased tribal participation would only come about if the cultural bias of most existing tests were eliminated, and replaced by assessment techniques which are appropriate for the Indian child.

Boarding Schools

Parents of boarding school students have many of the same problems described earlier in the section on due process. For years the catch-all phrase "social problems" has been used in referring children to boarding schools, and it covers children who are genuinely emotionally disturbed, as well as children who have no outstanding problems at all. In some BIA areas more than 50% of all children being evaluated are classified as needing special education. This is many times the national average even for minorities and almost certainly in error. Participants at the conferences agreed that BIA needs to develop more precise definitions for some of the children placed in boarding schools if this problem is to be eliminated.

Jurisdictional Overlap

Here again there is the problem of a lack of any clearly fixed responsibility as to who should handle the evaluation procedures. Sometimes this jurisdictional ambiguity results in multiple testing. Sometimes it results in no testing at all.

This situation can only be alleviated through regional services districts, or by combining resources through cooperative agreements. In some states cooperative teams have already been established. In others, it is left up to individual districts to work out their own cooperative arrangements. Usually it is the state education agency or the BIA area office that is in the best position to know where the resources are located. Similar cooperative planning and sharing of information is needed between the BIA and public schools since many Indians move back and forth between the two systems.

TRAINING AND PROGRAM DEVELOPMENT

The ultimate success of current child-find programs, evaluation and testing procedures, and the

guarantees of due process depends to a large degree on the effectiveness of the special education programs themselves. Although the negative aspects of the history of Indian education have been mentioned often in this report, many conferees believed that Indians will support programs that produce positive results. Clearly, however, such positive results will not be attained in the absence of adequate staff, facilities, and training to run the programs the way they ought to be run.

Personnel Shortages

School administrators at the conferences noted that a major barrier in isolated reservation areas is that it is extremely difficult to attract special education teachers. Salaries tend to be low, and in some reservation school communities there is no available housing. One consequence is that in many communities the sentiment exists that it is pointless to launch recruitment drives because there aren't enough facilities to take care of those who might be hired.

A second problem is the high turnover rate among teachers coming from the Anglo-American culture; the difficulties involved in adjusting to another culture, and to the isolation of many Indian communities has prompted many qualified special education teachers to return to mainstream America after a single tour of duty on the reservation.

One obvious solution is to begin extensive training programs for Indians who live in these remote communities. Many conferees urged that IHS and regional universities set aside more training slots for special education diagnosticians and teachers — especially special vocational education teachers — which would be filled by people from the reservations. Another suggestion was to provide training in special education to Indian teachers who are presently working in regular classrooms.

While schools are waiting for local people to be trained, there is a need to develop recruitment programs that offer incentives to special education teachers. These could be in the form of higher salaries, some sort of fringe benefits, or simply the chance to make a real difference in the lives of children who need all the help they can get.

Another possibility mentioned at the conferences is to make certification standards more flexible for teachers working in isolated communities, and to emphasize the training of paraprofessionals.

Facilities Shortages

Apart from personnel needs, many of the smaller schools do not have the space for specialized programs. One result noted during the conferences is that children in need of special education may be thrown together in a single classroom without regard for their individual needs, so many parents feel that their child, though handicapped, is better off in a regular classroom, without special services.

Most reservation schools have almost no taxable property and therefore no bonding capacity. This qualifies them for federal construction funds under P.L. 815 and Title II of the Indian Self-Determination Act (P.L. 93-638) but appropriations for both acts have been minimal. In addition, many of the smaller schools are over forty years old, and have architectural barriers which exclude a number of handicapped children from easy access.

The problems of developing individualized education programs (IEP's) for handicapped children within these schools are complex and expensive, and aggravated by a chronic unpredictability of funds. To solve them will require careful planning, and the coordination of resources between MIA and nearby public schools.

Both systems usually have extensive teacher aide programs, and members of the regional conferences strongly recommended that these aides be given training in special education, even if it requires giving them released time from their other activities. The same course was urged for the many paraprofessionals employed by Project Headstart. Without such training there is a danger that handicapped children in their preschool years will be turned away because the paraprofessionals will have no idea how to work with them.

Miscellaneous

Some other course of action recommended by the various regional conferences include:

- the need to develop special education curricula that is compatible with maintaining cultural identity:

- that special education programs be extended into the summer months when staff and facilities are in greater supply:

- the importance of doing follow-up work with students leaving the system.

- the need to train and assist the parents of handicapped children to improve life at home and to get more parental involvement in the design of IEP's.

SUPPORT SERVICES

Jurisdictional Overlap

There are potentially so many service providers for Indians — especially federally connected Indians — that it is frequently difficult to fix responsibilities. As simple a matter as a school physical for Indian children can create minor chaos. The local education agency doesn't do the examination because they think it is being done or should be done by the Indian Health Service. IHS doesn't do it because they assume it's being handled through special funds such as Johnson-O'Malley. The people in the Johnson-O'Malley program are waiting for the local education agency to handle it. As one conferee noted. "Support services for Indians are frequently reminiscent of a chair with ten legs and no seat."

Both state and local education agencies need to know the full range of services to which Indian children are entitled. They also need to know which of those services are actually delivered. A child may have a right to have glasses, orthopedic aids, or a wheelchair, but in many areas these items are in short supply.

Some states don't provide equal services to Indians in public schools because they think it's a federal responsibility. Many states have the basic provision of P.L. 94-142 built into existing state laws, but in other states these requirements are altogether new. The innovative nature of the new requirements can add to the confusion, but it can also provide the impetus for the kind of coordinated planning that has been missing until now.

This planning must include the diffiuclt question of who pays for what, and when. In legal terms it can be defined simply: Indian children are entitled to all services and benefits going to other children, but they may also be entitled to additional federal services because they are Indians. Sometimes thes other services exist on paper but not in fact. In some regions of the country they don't even exist on paper. Conferees agreed that the situation isn't likely to change very much until BIA begins to coordinate its own education and social service efforts — at the national policy level, in area offices, and at the local field level. When this is accomplished agreements can be worked out between BIA and the states for delivery of support srvices.

Relationships between IHS and state and local medical services also need to be defined. This is particularly crucial in isolated areas where services of any kind of minimal. The various health agencies also need to work together with social service agencies to provide transportation, wheelchairs, orthopedic aids, and other such equipment that handicapped children need.

Miscellaneous

Conference participants also pointed out a number of other issues that deserve attention if support services are to reach the children they're supposed to reach.

- There is a need for greater cooperation on a department level between the Departments of Interior and HEW. When this occurs, there will be a greater chance that the spirit of working together will filter down to the local level.

- States should draw up a comprehensive list of all related services from federal, state and local programs so that people will know who to go to for what.

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guarantees of due process depends to a large degree on the effectiveness of the special education programs themselves. Although the negative aspects of the history of Indian education have been mentioned often in this report, many conferees believed that Indians will support programs that produce positive results. Clearly, however, such positive results will not be attained in the absence of adequate staff, facilities, and training to run the programs the way they ought to be run.

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One obvious solution is to begin extensive training programs for Indians who live in these remote communities. Many conferees urged that IHS and regional universities set aside more training slots for special education diagnosticians and teachers — especially special vocational education teachers — which would be filled by people from the reservations. Another suggestion was to provide training in special education to Indian teachers who are presently working in regular classrooms.

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Apart from personnel needs, many of the smaller schools do not have the space for specialized programs. One result noted during the conferences is that children in need of special education may be thrown together in a single classroom without regard for their individual needs, so many parents feel that their child, though handicapped, is better off in a regular classroom, without special services.

Most reservation schools have almost no taxable property and therefore no bonding capacity. This qualifies them for federal construction funds under P.L. 815 and Title II of the Indian Self-Determination Act (P.L. 93-638) but appropriations for both acts have been minimal. In addition, many of the smaller schools are over forty years old, and have architectural barriers which exclude a number of handicapped children from easy access.

The problems of developing individualized education programs (IEP's) for handicapped children within these schools are complex and expensive, and aggravated by a chronic unpredictability of funds. To solve them will require careful planning, and the coordination of resources between MIA and nearby public schools.

Both systems usually have extensive teacher aide programs, and members of the regional conferences strongly recommended that these aides be given training in special education, even if it requires giving them released time from their other activities. The same course was urged for the many paraprofessionals employed by Project Headstart. Without such training there is a danger that handicapped children in their preschool years will be turned away because the paraprofessionals will have no idea how to work with them.

Miscellaneous

Some other course of action recommended by the various regional conferences include:

- the need to develop special education curricula that is compatible with maintaining cultural identity:

- that special education programs be extended into the summer months when staff and facilities are in greater supply:

- the importance of doing follow-up work with students leaving the system.

- the need to train and assist the parents of handicapped children to improve life at home and to get more parental involvement in the design of IEP's.

SUPPORT SERVICES

Jurisdictional Overlap

There are potentially so many service providers for Indians — especially federally connected Indians — that it is frequently difficult to fix responsibilities. As simple a matter as a school physical for Indian chldren can create minor chaos. The local education agency doesn't do the examination because they think it is being done or should be done by the Indian Health Service. IHS doesn't do it because they assume it's being handled through special funds such as Johnson-O'Malley. The people in the Johnson-O'Malley program are waiting for the local education agency to handle it. As one conferee noted. "Support services for Indians are frequently reminiscent of a chair with ten legs and no seat."

Both state and local education agencies need to know the full range of services to which Indian children are entitled. They also need to know which of those services are actually delivered. A child may have a right to have glasses, orthopedic aids, or a wheelchair, but in many areas these items are in short supply.

Some states don't provide equal services to Indians in public schools because they think it's a federal responsibility. Many states have the basic provision of P.L. 94-142 built into existing state laws, but in other states these requirements are altogether new. The innovative nature of the new requirements can add to the confusion, but it can also provide the impetus for the kind of coordinated planning that has been missing until now.

This planning must include the diffiuclt question of who pays for what, and when. In legal terms it can be defined simply: Indian children are entitled to all services and benefits going to other children, but they may also be entitled to additional federal services because they are Indians. Sometimes thes other services exist on paper but not in fact. In some regions of the country they don't even exist on paper. Conferees agreed that the situation isn't likely to change very much until BIA begins to coordinate its own education and social service efforts — at the national policy level, in area offices, and at the local field level. When this is accomplished agreements can be worked out between BIA and the states for delivery of support srvices.

Relationships between IHS and state and local medical services also need to be defined. This is particularly crucial in isolated areas where services of any kind of minimal. The various health agencies also need to work together with social service agencies to provide transportation, wheelchairs, orthopedic aids, and other such equipment that handicapped children need.

Miscellaneous

Conference participants also pointed out a number of other issues that deserve attention if support services are to reach the children they're supposed to reach.

- There is a need for greater cooperation on a department level between the Departments of Interior and HEW. When this occurs, there will be a greater chance that the spirit of working together will filter down to the local level.

- States should draw up a comprehensive list of all related services from federal, state and local programs so that people will know who to go to for what.

- When representatives of the tribes and various states get together to work out agreements, they should be talking about nothing but special education. The introduction of highly charged issues such as land or water rights virtually guarantees that no agreements will be worked out.

- Although various agencies have a share of responsibility for providing support services to Indian migrant children, those responsibilities are not fixed, nor clearly communicated, and there is little pooling of information.

- There are serious problems in establishing inter-agency linkages in residential child care facilities New agreements must be worked out.

- In many states the Headstart programs don't know whether to go to BIA or the state education agencies for support services for handicapped children. Responsibilities must be defined, and this information disseminated.

RECOMMENDATIONS

1. An essential first step in working through jurisdictional confusion must be a written and clearly drawn working arrangement between BIA and State Departments of Education. In order to give the agreement policy-making authority, it must be negotiated at a high administrative level — the chief state school officer and the BIA area director — but it must also include the state director of special education and the BIA area director of special education. They are the people who will have to carry out the agreement and overcome obstacles on a school district and agency level. There can be no one model agreement that all states and areas follow. Each region has special problems and circumstances that must be taken into account.

2. There must be a Policy Agreement on the Cabinet level between HEW and the Department of Interior that will make it legal and practical to draw up local functional plans that will complement each other.

3. Once the individual states and the BIA have agreed on their areas of responsiblity and operation, clear roles must be defined for Indian Health Service, BIA Social Services, and state social service organizations.

4. Clients receiving social services ought to know what services they are entitled to, who offers them, and where they can be found. Ideally, every community, however small, would have a directory that would tell them what services to expect, and who to go to for what. This will require extensive community liaison work, and cannot be accomplished with one massive printing.

5. Tribal staff members should serve as links in the community education process. They will need additional information and training — those on the federal laws, and the handicapped laws with a corresponding state. They will need to be familiar with the BIA plan for their areas, as well as their state plan.

6. Individuals who now work in programs for handicapped Indian children should be involved in training local or indigenous personnel. They are an essential link between federal and state programs and local communities. They can describe what special programs for the handicapped can be accomplished.

7. Indian parents of handicapped children can form part of the base for developing Indian advocates among the parents. They have to date not been widely involved in advocacy programs on either a state or local level. The notable exceptions have been those parents whose children attend some of the new Indian contract schools for the handicapped. Existing Indian education staff members also need training and encouragement so that they can bring Indian parents together with existing advocacy groups. It seems certain that the bonds between parents of handicapped children can be stronger than the differences between Indian and non-Indian.

8. Federal and state agencies need to share their information systems. There is a need to develop a data-gathering system which would allow an easy exchange of information between agencies. This recommendation includes all related state systems, BIA Education, BIA Social Services and IHS. There should also be active coordination between Indian programs and migrant programs, particularly at the regional and local levels.

9. Agencies collecting information must realize the drawbacks in the U. S. census figures commonly used. There are tribes where the voter registration count exceeds the total census count for people of voting age. Tribal figures are considerably more accurate.

10. Training funds should be committed on a national level to promote a considerable increase in the number of Indian special education teachers. There should also be a great increase in training for paraprofessionals. None of this will work unless there is also a commitment on a regional and local level from universities, hospitals, and diagnostic centers. Indian people also need to be trained in evaluation and testing. A recruitment drive should be started at the high school and even junior high level for training in special education and all related fields.

11. Vocational training for handicapped Indian needs to be considerably increased. Given the high unemployment rate in many areas for those who aren't handicapped, this will take imaginative planning and the financial commitment of state and federal agencies. It will also take careful coordination between training institutions and employment planning sections.